1879

11-260

Suit for the property issued?

Field.

Submitted Jan. 22 1880

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1040.

JAMES H. SIMMONS, PLAINTIFF IN ERROR,

vs.

AUGUST WAGNER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 31, 1879.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of Illinois, greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said court before you, between James H. Simmons and August Wagner, a manifest error hath happened, to the great damage of the said James H. Simmons, as by his complaint appears: We, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein what of right and
b according to the laws and customs of the United States should be done.

Witness the hon. Morrison R. Waite, Chief Justice of the said Supreme Court, at Springfield, in said district, this 25th day of July in the year of our Lord eighteen hundred and seventy-nine, and of our Independence the one hundred and fourth year.

[SEAL.] J. A. JONES,
Clerk of the U. S. Cir. Court, South. Dist. Ills.

(Indorsed:) U. S. Supreme Court. James H. Simmons vs. August Wagner. Writ of error. Filed July 25, 1879. J. A. Jones, clerk.

c 5274.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

I have appointed and by these presents do constitute John N. Daniels my true and lawful deputy to execute the annexed writ Jas. H. Simmons vs. August Wagner, and to make return of the execution thereof according to law.

E. R. ROE,
U. S. Marshal.

I have served the within writ upon the persons therein named in the following manner, to wit: Upon August Wagner on the first day of October, A. D. 1879, by personally delivering to him a true copy of the same on the aforesaid day.

E. R. ROE, *Marshal,*
By JOHN N. DANIELS,
Special Deputy.

John N. Daniels, being duly sworn, deposes and says that he served the annexed writ as stated in the foregoing return, and according to law.

JOHN N. DANIELS.

Sworn to before me this 2d day of October, A. D. 1879.
[SEAL.] WM. H. HALL,
Notary Public.

d UNITED STATES OF AMERICA, *ss:*

To August Wagner, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Illinois, wherein James H. Simmons is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness S. H. Treat, judge of the district court, and one of the judges of the circuit court of said southern district of Illinois, at Springfield, in said district, this 22nd day of September, in the year of our Lord eighteen hundred and seventy nine, and of our Independence the one hundred and fourth year.

[SEAL.] S. H. TREAT,
District Judge.

e STATE OF ILLINOIS,
County of Madison:

This affiant on oath says that he served the within notice upon the said August Wagner on the first day of October, 1879, by reading the same to him and by personally delivering to him a true copy of the same on the aforesaid day.

JOHN N. DANIELS.

Subscribed and sworn to before me on this 2d day of October, 1879.
[SEAL.] WM. H. HALL, *N. P.*

(Indorsed:) U. S. Supreme Court. James H. Simmons vs. August Wagner. Citation.

Service, 2; mileage (84), 5.05; $7.05.

1 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, judge of the district court of said district, and in the absence of the Hon. Thomas Drummond, judge of the seventh judicial circuit pro tempore, sole judge of said circuit court, on Monday the 2d day of June, at the June term of said court, in the year of our Lord, eighteen hundred and seventy nine, and of our Independence the one hundred and third year.

J. A. JONES,
Clerk.

JAMES H. SIMMONS *vs.* AUGUST WAGNER. } In ejectment.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

James H. Simmons, a resident and citizen of the State of Pennsylvania, puts in his place G. B. Burnett, esq, his attorney, against August Wagner, a citizen and resident of the southern district of Illinois, defendant, of a plea of trespass and ejectment, who puts in his place Messrs. Wise and Gillespie, his attorneys.

2 SOUTHERN DISTICT OF ILLINOIS, *ss:*

Be it remembered, that, heretofore, to wit, on the 23rd day of January, in the year of our Lord eighteen hundred and seventy eight,

came said plaintiff, by his attorney, and filed in the office of the clerk of said court his bond for costs and declaration in said cause, which said bond for costs and declaration are in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA, *ss:*

Circuit court, southern district of Illinois, June term, A. D. 1878.

JAMES H. SIMMONS
vs.
AUGUST WAGNER. } In ejectment.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State and of the United States.

Dated this 23rd day of January, 1878.

GEO. B. BURNETT.

(Endorsed:) Filed January 23rd, A. D. 1878. J. A. Jones, clerk.

3 *Declaration.*

UNITED STATES OF AMERICA, *ss:*

Circuit court of the United States, southern district of Illinois, June term, A. D. 1878.

James H. Simmons, the plaintiff in this suit, (who is a citizen of the State of Pennsylvania, one of the United States of America,) by G. B. Burnett, his attorney, complains of August Wagner, the defendant, (who is a citizen and inhabitant of the State of Illinois, one of the United States of America,) of a plea wherefore he, the said defendant, with force and arms, &c., entered into the following described premises, for that heretofore, to wit, on the first day of January, A. D. 1878, the said plaintiff was possessed of certain premises situated in the county of Madison, in the State of Illinois, in the southern district of Illinois aforesaid, and described as follows, to wit, the northeast fractional quarter of section No. nineteen, in township No. four north, of range number nine west, of the third principal meridian; and being so possessed thereof, the said defendant afterwards, to wit, on the day and year last aforesaid, entered into said premises, and that he unlawfully withholds from the said plaintiff the possession thereof; and the said plaintiff avers that said premises exceed in value the sum of five hundred dollars, and
4 that he claims title to said premises in fee, wherefore said plaintiff says he is injured and has sustained damages to the amount of five hundred dollars, and therefore he brings suit, &c.

G. B. BURNETT,
Pl'ff's Att'y.

(Endorsed:) Filed January 23, 1878. J. A. Jones, clerk.

And afterwards, to wit, on said 23d day of January, in the year aforesaid, there was issued out of said clerk's office a summons in said cause

directed to the marshal of said district to execute, which said summons, together with the returns of the marshal thereon, is in the words and figures following, to wit:

Summons.

UNITED STATES OF AMERICA, *ss:*

Circuit court of the United States of America, southern district of Illinois.

To the marshal of the southern district of Illinois, greeting.

We command you that you summon August Wagner, if to be found in your district, to be and appear before our judges of our circuit court of the United States for the southern district of Illinois, on the first day of the next term thereof, to be held at Springfield, in the district aforesaid, on the first Monday of June, A. D. 1878 next, to answer unto James H. Simmons of a plea of trespass and ejectment, wherein the said plaintiff sues to recover of the said defendant that parcel of land, situated in the county of Madison and State of Illinois, in the said southern district of Illinois, which is described as follows, to wit: The northeast fractional quarter of section number nineteen (19), township number four (4) north, of range number nine west, of the third principal meridian, and in which action the said plaintiff claims title to said premises in fee simple, as well as the sum of five hundred dollars for his damage, as he alleges by reason of unlawfully withholding the possession of said premises since January 1st, 1878, by the defendant, and have you then an there this writ, and make return thereon in what manner you execute the same.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this twenty-third day of January, in the year of our Lord one thousand eight hundred and seventy-eight, and of our Independence the 102nd year.

[L. S.] J. A. JONES,
Clerk.

Return of marshal.

I hereby appoint John N. Daniels my special deputy to execute this writ, Jan'y 23, 1878.

E. R. ROE,
U. S. Marshal.

I have, this fourth day of April, A. D. 1878, served the within summons, by reading the same to the within named August Wagner, who is in possession of the within described premises.

E. R. ROE,
United States Marshal for the Southern District of Illinois,
Per JOHN N. DANIELS,
Special Deputy.

Subscribed and sworn to before me, by John N. Daniels, June 3, 1878.

[L. S.] WM. R. PRICKETT,
Notary Public.

(Endorsed:) Filed June 7, A. D. 1878. J. A. Jones, clerk.

And afterwards, to wit, on the 19th day of July, in the year aforesaid, came said defendant, by his attorneys, and filed in said clerk's office his plea in said cause, in words and figures following, to wit:

7 *Plea.*

Circuit court of the United States of America, southern district of Illinois, June term, A. D. 1878.

JAMES H. SIMMONS *vs.* AUGUST WAGNER. } Ejectment.

And now comes the said defendant, by Wise & Gillespie, att'ys, and defends the wrong and injury, when, &c., and says that he is not guilty of unlawfully withholding said premises as charged in the declaration, and of this he puts himself upon the country, &c.

WISE & GILLESPIE,
For Def't.

(Endorsed:) Filed July 19, 1878. J. A. Jones, clerk.

And afterwards, to wit, on Friday, the 19th day of July, at the June term of said court, in the year of our Lord eighteen hundred and seventy-eight, the following proceedings were had in said court, and entered of record in said cause, to wit:

8 *Order setting cause for hearing.*

JAMES H. SIMMONS *vs.* AUGUST WAGNER. } Ejectment.

JAMES H. SIMMONS *vs.* WILLIAM STALLINGS ET AL. } Ejectment.

JAMES H. SIMMONS *vs.* GEORGE ZEBOLD ET AL. } Ejectment.

JAMES H. SIMMONS *vs.* JOHN N. BROWN ET AL. } Ejectment.

By consent of parties in four last above entitled causes, said causes are set for hearing on 25th day of September next.

And afterwards, to wit, on the 21st day of September, in the year last aforsaid, there was filed in said clerk's office an agreement in said cause, which said agreement is in the words and figures following, to wit:

Agreement.

In circuit court United States for southern district of Illinois.

9 JAMES H. SIMMONS *vs.* AUGUST WAGNER. } Ejectment.

JAMES H. SIMMONS *vs.* WILLIAM STALLINGS & AMOS ATKINS. } Ejectment.

JAMES H. SIMMONS *vs.* GEO. ZEBOLD, WILLIAM HARSHAW, Amos Atkins & Jacob Buchreo. } Ejectment.

JAMES H. SIMMONS *vs.* JOHN N. BROWN & AMOS ATKINS. } Ejectment.

It is hereby agreed, the agreement to try the above cases on the 25th day of September, A. D. 1878, before said court is hereby set aside, and that said cases may be tried on such day in November as may be agreed upon, and which will be satisfactory to the court.

G. B. BURNETT,
For Plaintiff.
GILLESPIE & HAPPY,
For Def'ts.

10 (Endorsed:) Filed Sept. 21, 1878. J. A. Jones, clerk.

And afterwards, to wit, on Wednesday, the 12th day of February, at the January term of said court, in the year of our Lord eighteen hundred and seventy-nine, the following further proceedings were had in said court and entered of record in said cause, to wit:

Order taking case under advisement.

JAMES H. SIMMONS *vs.* AUGUST WAGNER. } Ejectment.

This day comes as well the plaintiff, by George B. Burnett, esq., his attorney, as the defendant by Messrs. Gillespie and Happy, his attorneys, and the issue joined by consent is tried by the court, a jury being waived; and the court, having heard the evidence and argument of counsel, takes the same under advisement.

And afterwards, to wit, on Thursday, the 27th day of March, at the term and in the year last aforesaid, the following further proceedings were had in said court and entered of record in said cause, to wit:

11 *Rule on def't to file brief.*

JAMES H. SIMMONS *vs.* AUGUST WAGNER. } Ejectment.

And now on this 27th day of March, 1879, comes the plaintiff, by his

counsel, and files his written argument and brief, and on his motion it is ordered by the court that the defendant file his argument and brief on or before the 15th day of April next.

And then, afterwards, to wit, on Thursday, the 3rd day of April, at the term and in the year last aforesaid, the following further proceedings were had in said court and entered of record in said cause, to wit:

Time extended.

JAMES H. SIMMONS
vs.
AUGUST WAGNER. } Ejectment.

On motion of defendant, by C. P. Wise, esq., his attorney, the time to file argument and brief herein is extended to 1st day of May next.

And now, afterwards, to wit, on Monday, the 2nd day of June,
12 at the June term of said court, in the year last aforesaid, the following further proceedings were had in said court, and entered of record in said cause, to wit:

Judgment.

JAMES H. SIMMONS
vs.
AUGUST WAGNER. } Ejectment.

And now on this 2nd day of June, 1879, come again the parties, by their counsel, and the court being now sufficiently advised in the premises, doth find the issue in favor of the defendant. It is therefore ordered by the court that the defendant recover of the plaintiff his costs herein expended, and that he have execution therefor.

And it appearing to the satisfaction of the court that the value of the premises in question amounts to more than five thousand dollars, it is therefore ordered by the court that a writ of error to the Supreme Court of the United States, to operate as a supersedeas, be allowed to the plaintiff, on his entering into bond to the defendant in the penalty of five hundred dollars, conditioned as the law directs, with security to be approved by the court, within sixty days from this date.

And the parties agree and stipulate that this cause on said writ
13 of error shall be submitted to the Supreme Court of the United States at the next term of said court under the provisions of the twentieth rule of said court.

And afterwards, to wit, on the 25th day of July, in the year last aforesaid, came said plaintiff, by his attorneys, and filed in said clerk's office his bill of exceptions in said cause, which is in the words and figures following, to wit:

Bill of exceptions.

UNITED STATES OF AMERICA.
Southern District of Illinois:

Circuit court, June term, 1879.

JAMES H. SIMMONS
vs.
AUGUST WAGNER. } Ejectment.

Be it remembered that this cause was tried at this term before the court, the honorable Samuel H. Treat, district judge of the southern district of Illinois, without the intervention of a jury, by consent of the

parties, and upon the trial of said cause the plaintiff, to maintain the issue on his part, introduced patent from the United States of America to James H. Simmons for the east fractional half of section nine-
14 teen in township four north, of range nine west, of the 3rd P. M., 249.90 acres, more or less, dated April 25, 1871.

Patent.

Certificate No. 29590.

(Examined.)

The United States of America to all to whom these presents shall come, greeting:

Whereas James H. Simmons, assignee of Charles W. Mecke, has deposited in the General Land Office of the United States a certificate of the register of the land office at Springfield, Illinois, whereby it appears that full payment has been made by the said Charles W. Mecke, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the east fractional half of section nineteen in township four north, of range nine west, third principal meridian, in the district of lands subject to sale at Springfield, Illinois, containing two hundred and forty-nine acres and ninety hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor-general, which said tract has been purchased by the said Charles W. Mecke:

15 Now, know ye, that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said James H. Simmons and to his heirs the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said James H. Simmons, and to his heirs and assigns forever.

In testimony whereof I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-fifth.

[L. S.] U. S. GRANT.

By the President:
By J. PARRISH, *Sec'y.*
J. N. GRANGER,
Recorder of the General Land Office.

Recorded vol. 57, page 423.

15½ (Endorsed:) Book 19. # 885. Page 485. United States to James H. Simmons. Filed May 15th, 1871.

STATE OF ILLINOIS,
Madison County, ss:

I hereby certify that this instrument was this day duly recorded in said county, in book 112, page 257.

Given under my hand this 15th day of May, A. D. 1871.

H. H. KUHLENBECK, *C'lk,*
By E. P. GREENWOOD, *D'p'ty.*

16 To the introduction of this patent in evidence the defendant then and there objected for the reason that the said patent was issued without authority of law, the government having long before parted with all its interest in the said real estate, but the court allowed the same to be read in evidence, to which defendant then and there excepted.

The plaintiff here rested his case.

The defendant, to maintain the issue on his part, introduced in evidence the original land office books of the Kaskaskia district, State of Illinois, the same having been brought before the court by the proper custodian and from the proper office, and the defendants offered in evidence the following entries therefrom as follows:

1st. Journal A, page 235, of the register of the land office of Kaskaskia:

EXHIBIT 1.—*Copy from journal A, records of land office, Kaskaskia, p. 235 register's book.*

LAND OFFICE AT KASKASKIA,
17*th April*, 1816.

John Lewis, of Madison.

For amount of purchase money of the unappropriated part of fractional section No. 18, the north fractional half of section No. 19, the southeast fractional quarter of section No. 19, and southwest fractional quarter of section No. 20 in township No. 4 N., of range No. 9.11
17 S., con. 528.60 acres, at 2 dol's p'r acre, applied for this day, 1,057.20.

2nd. Ledger B, page 87, receiver's book, with memoranda thereon:

18 EXHIBIT 2.

John Lewis, of Madison, for the frac. sec. 18, *N. fr. h'lf sec.* 19, *S. E. fr. qr. sec.* 19, *and S. W. fr. qr. sec.* 20, *T.* 4 *N., R.* 9 *W.*

DR.								CR.
				Am't allowed in discount.		Am't paid in special.		Total.
				Dolls.	Cts.	Dolls.	Cts.	
1816.		1816.						*Cts.*
April 17.	235. To sales of public land, 150...	April 17.	237. By cash acc't 9..					$52 86
	1,057 20	May 11.	273. By do. do. 10..					211 44
		1829.						
		July 2.	291. By sales of public lands.....			218		513 76
		" "	292. By sundries.....					279 14
	1,057 20							1,057 20

NOTE.—Further credit, per Dec., No. 430, dated 19th July, 1822; balance, $790.90, payable in 8 instalments.

Copy from Ledger B, records Land Office Kaskaskia, p. 87 receiver's book.

19 Plaintiff at the time objected to the introduction of the record, which objection was overruled, to which ruling of the court the plaintiff then and there excepted.

3rd. Journal D, pages 291 & 292, register's book.

EXHIBIT 3.—*Copy from journal D, pp. 291, 292, register's book, Kaskaskia, under date July 2, 1829.*

218. Sales of public lands, dr., to sundries, viz: 87 B. John Lewis, of Madison Co.

For fractional section 18 & northwest fract. quarter section 19, township 4 N., range 9 W., containing 256.88 acres, relinquished to the United States by William Russell, per his relinquishment No. 21, dated this day, being part of a tract purchased 17 April, 1816, at 2 dollars per acre 513 76

87 B. Sundries, drs., to John Lewis, of Madison Co., viz:

For the following sums which, after the relinquishment of the frac'l section 18, & northwest frac'l quarter section 19, township 4 N., range 9 W., are received in full for the northeast & southeast frac'l quarter section 19, & southwest frac'l quarter section 20, same township & range, containing 271.72 acres, being the part not relinquished purchased 17th April, 1816, at 2 doll's per acre, per receiver's receipt No. 5220, dated this day, & my final certificate No. of same date granted to William Russel, of S. Louis, Mo., viz:

20 13. Cash 174 46
90. Discount on $\frac{a}{c}$ at 37½ p'r cent 104 68

4th. Book D, applicant's entry book, page 562:

EXHIBIT 4.—*Copy from Kaskaskia office, book D, applicant's entry book, p. 562.*

LAND OFFICE AT KASKASKIA,
July 2d, 1829.

William Russel, of St. Louis, Missouri, produced a receipt from the receiver of public monies, No. 5220, dated this day, for the sum of one hundred and seventy four dollars forty six cents, which, with the discount thereon, stated and allowed, of one hundred and four dollars sixty-eight cents, is in full of the balance due or to become due for the northeast fractional quarter of section No. 19, southeast fractional quarter of section No. 19, and southwest fractional quarter of section No. 20 in township No. 4 N., of range No. 9 W., containing 271.72 acres, purchased on the 17th of April, 1816, at 2 dollars per acre.

5th. Letter to General Land Office at Washington of July, 1829, as found in a book marked Shadrach Bond's letter book, which book was found with the other books in the possession of the proper custodian and in the proper office.

21 LAND OFFICE AT KASKASKIA 1829

July.

Hencewith I trance mit my Return of Land paid for under the art. of 21 s. hundred 1828 from the 1st to the 3d instant inclusive, my abstract of lands relinquished in the same time—the recep'ts issou'd by the Receiving from s'c's 5211 to 5221 [erased with ink: "inches"] inclusive, cancelled, tigether with final Certificate. Numbers 833 to 847 [erased with ink: "inches"] inclusive—I likewise transmit by the same conveyance my abstracts of sertificate of forfeiting Land stock issued during the month of June last and from the 1st to the 3d of July instant inclusive, relinquishned to from N. 19 to N. 26 inclusive you with also received in the same packets the following papers to:

A copy of one deed Beeng davilon to Geo. davisons dated 4 March 1818, due from Geo. & Jennett davison to upton Smith dated 6 Aprill 1822, one from Lais Smith to B. Lorrence date June 29, 1829. one from Lucy Stephenson & others to said Torence one from T. E. owen to Havilon Lawson dated Octo 1821. one from francis caban & wife & Jno.
22 cook & wife this a coppy dated august 16, 1817. one from This copy to upton Smith 17 Sept 1821 & one from Isaar cop to upton Smith dated Sep. 22 1821 & one from george Davilon to said Smith may 19,—Letters of adminis the. to Stephen and Milly date 16 marsch 1829 a proof of atter for Ann collet to Samson Roberts date 11 June 1829 a quit claim due for Chas Walker & Jas Noretrier to henry W. connoly, dated 1st Sep 1822 a due for n. m. ayers & wife to geo. Tonquin dated 13 mar 1819 one for m. L. Roberts & wife to same dated 22 June 1819 one for Wm Trevor & wife to same dated 20 June 1816 one for Eledams to same dated 18 June 1829 one for Elenzer Tolemern to Eledams dated 8 march 1821 a d'ed for Richard memphey to *to* wm Adair dated 17 ap'l 1828 one for S'mon milard to said murphey dated 9 feb 1824—one for Leniar millard to mr Ad'ir dated 6 January 1824 a due assignmer on certif'c of for creditors and 448 formedable vankosier to Abter vankosier fr dated 30 June 1829—a due form Wm. Pyle to W. Shelton, dated 7 apr. 1829 one from Alephed w. walker to Dan'l Reece, dated 20th Dec 1828 one from Factor to said walker 27th Nov. 1828 one from Thos. Cox to Harry Wilton 4th Dec., 1828; one from same to same same date—one from said H. Wilton to Reece & Vankassier 29 June 1827, one from Thos. Cox to H. Wilton, 4th Dec. 1828. one from A. Fieid to Thos. Cox 26 Se,o. 1829; fr one from Wm. Shelton to Thos. Cox & A. Field 16 may [erased with ink: "18th"], 1819. The Transfeer from Geo. Walker to James Morrison accompanied feinal certs. N. 321 & 322, which ware transmitted to your office the 29th may 1823.

I am, &c.,

S. B.

Hon. G. G., *G. L. O.*

23 Plaintiff at this time objected to the introduction of the record, which objection was overruled; to which ruling of the court the plaintiff then and there excepted.

6th. Letter of G. W. Graham, Commissioner of the General Land Office, dated September 12th, 1829, found in the files of the Auditor's office, he being the proper custodian, and that the proper office, and being an official document directed to the receiver of the land office at Kaskaskia, Illinois.

Subscribed and sworn to this 10th day of February, A. D. 1879, before me.

CYRUS BIRGE,
Notary Public.

28 STATE OF ILLINOIS,
Bond County, ss:

I, Cyrus Birge, a notary public in and for said county, do hereby certify that the foregoing is the deposition of Harry Wilton, resident of Bond County, Illinois, taken by consent before me as such notary public to be read in evidence in the cases referred to in the caption hereof; that said deposition was taken before me this day as such notary public, and said witness was duly sworn by me to answer the questions asked him, and that said interrogatories and questions were duly reduced by me to writing as aforesaid and duly signed by said witness.

Witness my hand and notarial seal this 10th day of February, A. D. 1879.

[L. S.] CYRUS BIRGE.
Notary Public.

To the introduction of this final certificate and the deposition the plaintiff at the time objected; which objections were overruled, and the pl't'ff then & there excepted.

The defendant also introduced a certified copy of "deed and power of attorney" between John Lewis and William Russell, dated July 8,
29 1875.

Deed and power of att'y to Russell.

This deed, covenants, and power of attorney made and entered into by and between John Lewis, of Madison County, in the Illinois Territory, of the one part, and William Russell, of the town of Saint Louis, in the Territory of Missouri, of the other part, witnesseth:

That the said John Lewis for and in consideration of the sum of fifty dollars to him in hand paid by the said Russell, the receipt of which payment is hereby acknowledged, and for the good causes and valuable considerations has granted, bargained, and sold, and does by these presents grant, bargain, and sell to the said William Russell, and to his heirs and assigns forever, six hundred and forty acres of land, be the same more or less, situate on the first large island in the Mississippi below the mouth of Wood River, it being the pre-emption right and claim of him, the said Lewis; which lands are more particularly described as follows, to wit, fractional section No. 18, in township No. 4 north, of range No. 9 west; the north fractional half and southeast fractional quarter of section No. 19, and southwest fractional quarter of section No. 20; all in township No. 4 north, of range No. 9 west, in the county of
30 Madison and Territory of Illinois on the island aforesaid. I' being expressly understood by the parties to this deed that the said Lewis is not bound to pay the United States their price for the aforesaid land and pre-emption right; nor is he to be liable to the said Russell for any damages in case no pre-emption right can be held in his name on the said island.

To have and to hold the pre-emption right and claim of land which the said Lewis now has or may hereafter have, to wit, the aforesaid fractional section No. 18, north fractional half and southeast fractional quarter of section No. 19, and southwest fractional quarter of section

No. 20, all in township No. 4 north, of range No. 9 west of the third principal meridian.

Together with all the estate, right, title, claim, or interest, which the said Lewis now has or can hereafter have, with all the appurtenances, benefits, advantages, or improvements, which to the same in any wise belongs or may belong, to him, the said William Russell, his heirs and assigns, forever; and he, the said John Lewis, hereby warrants and covenants to warrant the right and title of the above-described land, and every part and parcel thereof, against the legal claim or demand of himself, his heirs, or other legal representatives, now claiming or hereafter to claim through or under him, to him, the said Russell, his heirs and assigns, forever; and the said Lewis hereby further covenants with the said Russell that he, the said John Lewis, and Patience, his wife, will at any after the said land shall be entered by the said Russell, and the first installment thereon paid by him in the name of the said Lewis, make to him, the said Russell, any such other or further conveyance as to completely transfer all the right and title of the said Lewis and wife to him the said Russell, who is hereby fully empowered and authorized to enter the said land and pre-emption, and do every other matter and thing that he may deem proper or necessary towards completing the title for the same that I, the said Lewis, cou'd do if I were personally present, which when done is to be for the sole and only use and benefit of him, the said Russell. This power of attorney being hereby declared irrevocable, and all other or former powers by me, the said Lewis, given or pretended to have been given are hereby revok'd.

In testimony whereof I, the said John Lewis, have hereunto set my hand and seal the 8th day of July, in the year 1815.

JOHN LEWIS. [SEAL.]

Signed, sealed, and delivered in the presence of us:

AND'W DRIPS.

CH. STEWART.

This is to certify to all whom it may concern or who shall see these presents that John Lewis appeared before the undersigned, Thomas G. Davidson, a justice of the peace in and for Madison County, in the Illinois Territory, and acknowledged that he had signed, sealed, and delivered the foregoing instrument of writing to William Russell for the purposes therein contained.

Given under my hand and seal in the county aforesaid this 16th day of January, 1816.

[SEAL.] T. G. DAVIDSON, *J. P.*

Recorded this 23rd of Jan'y, 1816.

STATE OF ILLINOIS,
Madison County, ss:

I, John D. Heisel, clerk of the circuit court and ex officio recorder of deeds, and other instruments of writing within and for Madison County, in the State of Illinois aforesaid, do certify the above and foregoing to be a true and complete copy of an instrument of writing or deed of conveyance purporting to be executed by John Lewis to one William Russell, as the same is now appearing of record at my office, in said county, in book B, on page 101.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court at office, in the city of Edwardsville, this

24th day of April, A. D. one thousand eight hundred and seventy-nine.
[L. S.] JOHN D. HEISEL, *Clerk.*

Also deed from John Lewis and wife to William Russell, dated September 13, 1876.

Deed.—Lewis & wife to Russell.

This deed, made and entered into by and between John Lewis and Patience, his wife, of Madison County, in the Illinois Territory, of the one part, and William Russell, of the town and county of St. Louis, in the Missouri Territory, of the other part, witnesseth:

That the said John Lewis and Patience Lewis, his wife, for and in consideration of fifty-five dollars, cash, to them in hand paid, and for the further consideration of two hundred and sixty-four dollars and thirty cents heretofore paid by the said Russell for the said John Lewis to the receiver of publick monies at Kaskaskia, being the first enstallment for the payment of five hundred and twenty-eight acres & $\frac{60}{100}$ of an acre of land entered at the land office in Kaskaskia for and on the pre-'mption
right of the said John Lewis, on the 17th day of April, 1816, then
34 being for the unappropriated part of section No. 18, the north fractional half & southeast fractional quarter of section No. 19, and the southwest fractional quarter of section No. 20, all in township No. 4 north, of range No. 9 west, situated in the big island in the Mississippi, being the first below the mouth of Wood River, in the Illinois Territory. And for the further sum and consideration of seven hundred and ninety two dollars and ninety cents the remaining enstallments hereafter to be paid to the United States or receiver of public monies by the said Russell as the same comes due, making in the whole the sum and consideration of eleven hundred and twelve dollars and fifty cents, for which said sums and consideration the said John Lewis and Patience Lewis, his wife, have granted, bargained, & sold, and does by these presents grant, bargain, and sell to the said William Russell, and to his heirs and assigns forever, all and singular of the aforesaid fractional section No. 18, north fractional half & southeast fractional quarter of section No. 19, and southwest fractional quarter of section No. 20, all in township No. 4 north, of range No. 9 west aforesaid.

Together with all and singular of the premises, appurtenances, benefits, and advantages which to the same in anywise belongs to
35 him, the said William Russell, his heirs and assigns, forever.

To have and to hold the said lands and premises, warranted by these presents by the said Lewis and wife, against the claim of themselves, their heirs and representatives, to the only proper use of him, the said William Russell, his heirs or assigns, forever.

In testimony whereof the said John Lewis and Patience, his wife, have hereunto set their hands and seals this 13th day of September, in the year 1816.

JOHN LEWIS. [SEAL.]
her
PATIENCE + LEWIS. [SEAL.]
mark.

Signed, sealed, & delivered in presence of—
SIMON WHEELOCK.
JAS. E. R. PRON.

I, Thomas G. Davidson, a justice of the peace in and for Madison County, in the Illinois Territory, do hereby certify to all whom it may concern, that John Lewis, named in the foregoing deed, personally appeared before me and acknowledged that he had signed, sealed, & delivered the foregoing deed, as his free and voluntary act, to William Russell, for the purposes it contains. And Patience Lewis, wife of the said John Lewis, also appeared before me; at which time I made her acquainted with the contents of the foregoing deed, and she, separate and apart from her husband, acknowledged that she had signed,
36 sealed, & delivered the foregoing d of her own free will, free and clear from any restr', coersion, or undue influence from her husband.

Given under my hand and seal, in the aforesaid county of Madison, this 14th day of September, in the year 1816.

[SEAL.] T. G. DAVIDSON, *J. P.*

Recorded Sept. 16th. 1816.

STATE OF ILLINOIS,
Madison County, ss:

I, John D. Heisel, clerk of the circuit court and ex-officio recorder of deeds and other instruments of writing within and for Madison County, in the State of Illinois aforesaid, do certify the above and foregoing to be true and complete copy of an instrument of writing or deed of conveyance purporting to be executed by John Lewis and Patience Lewis, his wife, to one William Russell, as the same is now appearing of record at my office in said county, in Book C, page 9.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at office in the city of Edwardsville, this 24th day day of April, A. D. one thousand eight and seventy-nine.

[L. S.] JOHN D. HEISEL.

It was admitted by the plaintiff on the trial that defendant and
37 his grantors from Russell have a regular chain of title, all properly made and recorded, have paid all taxes, and have been in the undisturbed possession of the land described in the declaration and undisputed from John Lewis down until the plaintiff claimed the same.

This was all the evidence produced by the defendant.

The plaintiff thereupon introduced the following letter of December 12th, 1871, from Willis Drummond, Commissioner of General Land Office:

Letter from Willis Drummond, Dec. 12, '71.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Dec'r 12th, 1871.

JAMES H. SIMMONS, Esq.,
Philadelphia, Pa.:

SIR: In reply to your letter of 29th ult. I have to state that on examination of the records of this office it appears that the E ½ section 19, T. 4 N., R. 9 W., 3rd P. M., Illinois, together with other tracts, were entered at the then Kaskaskia district office, April 17, 1816, under the old credit system, by John Lewis, at the then price of $2 per acre.

On the said date of entry Mr. Lewis made a payment of $52.85, per receipt No. 656; and on May 11th, 1816, he made a further pay-

38 ment of $?11.44, per No. 690, making in all $264.30, or one-half of the purchase money.

No further payment appears to have been made, and no further action taken in the premises by John Lewis, and the lands became properly subject to forfeiture under the act of May 10, 1800, and should have been so forfeited. Our records do not show, however, that the same were formally declared forfeited at that time.

On the 10th July, 1822, William Russell presented himself at the Kaskaskia office, claiming to be the assignee of the said John Lewis, and made declaration No. 430, receiving thereupon a certificate of further credit. The law and the rules and regulations of this office imperatively required that in such cases the evidence of assignment should be filed with the registers of the district land offices, and transmitted by them to this office, with the other papers. Without such evidence of assignment, the Commissioner of the General Land Office was required by the law to ignore the assignee and issue patent to the original purchaser, even though the said assignee should have made the final payment in the case.

In the case under consideration no evidence of assignment was ever filed in the district office, and none was transmitted to this office, with the exception of a memorandum at the bottom of the said decla-

39 ration No. 430, as follows: "Deed from John Lewis & wife to William Russell for the above trust, acknowledged and recorded in Madison County, has been shown to me by William Russell, who retains it." This memorandum is not in the handwriting of the register, and is not made over but under his signature.

It was therefore deemed insufficient evidence of assignment by this office, and after waiting, as it appears, nearly two years that this defect might be remedied, the lands comprised in John Lewis' entry were forfeited and offered at public sale in July, 1824, becoming thereafter subject again to private entry. Portions of the lands were subsequently purchased at private entry by Jacob and Samuel Hawkins, George Job, and others, but the E. ½ S. E. ¼ sec. 19, T. 5 N., r. 9 W. 3rd P. M. remained vacant public land until Jan'y 25, 1871, when the same was entered in due form of law by Charles W. Mecke, and on April 25, 1871, patent issued to you, as assignee of said Mecke.

Relation to an alleged final payment by relinquishment of certain lands (per relinquish. No. 21), together with cash and forfeited land stock, by the said William Russell, in July, 1829.

I have to state that the records and files of this office contain no evidence of any such transaction.

40 No payment of cash and no surrender of forfeited land stock by said William Russell in relation to the lands in question have ever been reported to this office. Further than this, relinquishments No. 21 of the two series issued by the district office at Kaskaskia, one under the relief act of March 2d, 1821, and the other under the act of May 18, 1824, are both on file in this office, and are found to have been made, the first, dated August 14, 1821, by Jacob Bowerman, and the other, dated Nov'r 30, 1824, by Peter Paulens, and both describe totally different lands from those under consideration.

I may state that there is evidence on file in this office showing that, at the period when these lands were first entered there existed in the Kaskaskia and Edwardsville districts a combination of individuals who, by corrupt and illegal practices, possessed themselves of large bodies of the most valuable lands in that vicinity, greatly to the detriment and loss of bona fide settlers and the government. William Russell and the

then register at Kaskaskia are shown to have been active and leading participants in this combination, and any irregularities in the history of these lands are without doubt attributable to a collusion between the said Russell and the register, by which some false color of title
41 may have been passed to Russell outside of the official records.

Very respectfully,

WILLIS DRUMMMOND,
Commissioner.

Exemplification, dated December 26, 1871, of an original letter of October 9, 1816, of B. Stephenson to Josiah Meigs, from the files of the General Land Office.

Exemplification.—Dec. 26, 1871.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
December 26th, 1871.

I, Willis Drummond, Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification of the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.]

WILLIS DRUMMOND,
Commissioner of General Land Office.

(Confidential.)

KASKASKIA, *Oct. 9th*, 1816.

DEAR SIR: By the last mail I had the pleasure to receive your
42 confidential letter, noticing electioneering publications in the Missouri Gazette, and desiring to know something further in relation to a petition against you as surveyor general which was said to have been put into circulation in this Territory in 1814.

There are persons enough who about that time heard of such a petition, among others, Governor Edwards recollects that inquiries were made of him concerning it. I believe, however, that the bad prospects of success, or the fear of Gen'l Rector (who though a very amiable, is a very determined and sometimes rather a desperate man) caused the petition to be suppressed. That it did exist, I have long been well convinced. It was said to be in the hands of a fellow who called himself Dr. Smith, but who afterwards was ascertained to be a fugitive from justice; a counterfeiter of money and most unprincipled villain.

This man, William Russell, & Col. Easton, were in this village in the fall 1814, about the time that the petition was said to have been put into circulation, and if I am not greatly mistaken they all put up at the house of James Gilbreath, the man who sold a great deal of land for taxes, to Russel, for himself and Easton, two years after he
43 was removed from the office of sheriff, and who turned out to be an associate of Smith's in the passing of an immense quantity of counterfeit money; since the receipt of your letter I have made some further inquiries relative to the petition, and have ascertained in a way perfectly confidential, but entirely to be relied upon. that proof of the existence of the petition from the confession of Wm. Russell (the part-

ner of Col. Easton) can be established by a gentleman of the Missouri Territory, who is high in office, and whose veracity is unquestioned; according to which confessions one of his charges against you was for your not having sent on to the land-office at Kaskaskia a plat of the surveys which had been previously made.

From the whole of the circumstances it is impossible for me to doubt that Col'n' Easton was the author of the petition. His denial of the fact has but little weight with me; for you may also find from the Missouri Gazette (which is devoted to him) that he denied that he ever purchased a New Madrid claim till November, 1815, which I am credibly informed can be disproved, not only by oral testimony, but by the records of New Madrid County.

44 His speculations at this place are, however, much more important, and as they have a direct relation to the duties of your office, I feel myself bound, from the polite and friendly attentions with which you have repeatedly honored me, to indicate them to you in such a way, that if you please to prosecute the inquiry, you shall be at no loss for the means of obtaining a complete development of the facts.

As I succeeded the above mentioned James Gilbreath in the office of sheriff and collector of Randolph County, I personally know that he was removed in the summer of 1809, notwithstanding which, in the year 1811 (without any law to authorize it) he did actually sell every description of titles (including unlocated claims) which were contained in the tax-lists that he received while he was sheriff, upon many of which claims the taxes had been paid. His never having paid a cent of the money so collected (if indeed he did collect any) into the public treasury, and other circumstances, have created a strong suspicion that he was interested in the attempted speculation, and that there was a criminal combination to cheat and defraud many people out of their

45 just rights, which in many instances has *has* been but too successful, in so far imposing upon them as to force them into the most unjust compromises.

The clerk's and recorder's offices at Kaskaskia will prove that Easton and Russell are interested to a great amount in the above and other sales for taxes now thought to be illegal. They will also prove that Easton, as the agent for certain claims, suffered them to be sold to Russell, from whom he afterwards received conveyances to himself (a snug way of securing property confided to his fidelity).

No one, I think, can doubt that Col'n' Easton must have known that unlocated claims were never authorized to be sold for taxes; and that the sales made by Gilbreath two years after he was removed from office were illegal. Yet, monstrous to tell, they have answered his purpose as well as if they had been perfectly fair and valid; and have enabled him and other speculators to appropriate a much larger quantity of the best and choicest lands of the government than the amount of the claims which they thus illegally possessed themselves of, paying for the additional quantity of land so acquired at the rate of $2.00 per acre only, when, had it been exposed to public sale, it would have brought

46 a deal more. It is necessary you should understand this business.

By the rule adopted by the register at Kaskaskia, any unlocated claim might be divided into two parts; at least actual settlers had a right to enter a whole section, so that by conveying a claim to settlers entitled to the right of pre-emption and getting them to make the entries in their own names, which has often been done, twelve hundred and eighty acres might be secured on one unlocated claim.

After the time for entering pre-emptions expired by the rule adopted,

a militia right of one hundred acres, by being divided, might be made to secure 320 acres, as each part has been allowed to enter a quarter section; people have in fact been encouraged by the register to buy only a single acre out of an unlocated claim, in order to obtain a right to enter a quarter section; and, indeed, $\frac{1}{100}$ of an acre has been allowed the same privilege within my own knowledge; a small part of an unlocated claim has been purchased in Kaskaskia for the express purpose of securing a copper mine.

To ascertain all this beyond the possibility of doubt, you have
47 only to ask the officers of the land-office at Kaskaskia for a list of all fractional parts of claims upon which locations have been allowed.

The reasonable division of a claim so as to accommodate settlers entitled to a pre-emption it is probable was a just, if not a legal, construction.

I understand this was approved by you, but I am confident you never could have contemplated that your approbation was to be converted into the means of favoring speculation so much to the injury of the government, and so contrary to the original intention of the law, but so it is, and if you want the facts you can get them from record.

The register of Kaskaskia land office will not deny his knowledge of all the circumstances relative to Gilbreath, and his subsequent sales of land for the taxes, and it is a fact that he uniformly has professed to believe the sales of unlocated claims illegal, yet still he delivered certificates for such claims to Easton and other purchasers under sheriffs' sales. His excuse is that he did not deliver them till the time of making application for them had nearly expired, and that then he delivered them to prevent a forfeiture to the very government of which he
48 was the representative and agent, but it is well known that persons entitled to such claims who applied for them by themselves or their friends within the time prescribed by law found that they had been delivered by the register to persons whom by his own acknowledgments he was convinced had no right to them. It seems strange that he should have thought it better for those claims to fall into the hands of those who had no right to them than that they should revert to his own government, from which more liberality to the rightful claimants was naturally to be expected than from those speculators.

You have already decided that unlocated claims could not be sold for taxes, and that no certificates delivered to such purchasers will be deemed valid by you. The first difficulty then is what is to be done with the land for which they have been given in payment, and, 2d, what is to be done with the additional quantities of land which have been located in consequence of those claims as above mentioned.

These lands are in general immensely valuable, and attempts will certainly be made to obtain patents for them with the least delay;
49 most probably some have already issued.

I presume the most valuable part lie in the land district of Edwardsville.

Notwithstanding the letter you wrote last spring to the register at Kaskaskia, the man whose case I stated to you has again applied, without success, for his certificate for the unlocated claim which had been delivered to Wm Russell.

It was thought, as you declared the certificate given to Russell nugatory, there was nothing to prevent making a memorandum of the mistake, and delivering a valid certificate to the rightful claimant. The time, however, of making locations is expired, and I understand that

Wm. McFerran intends to prefer a petition to Congress on the subject, which will exhibit all the above cases in their true colors.

I have the honor to be, respectfully, sir, your most ob't & hum. serv't,

B. STEPHENSON.

To the honorable JOSIAH MEIGS.

Exemplification dated January 9th, 1872, from the records and files of the General Land Office.

50 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
January 9th, 1872.

I, Willis Drummond, Commissioner of the General Land Office, do hereby certify that the annexed are true and literal exemplifications from the records and files of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.]

WILLIS DRUMMOND,
Commissioner of General Land Office.

John Lewis, for the unappropriated part of frac. sec. 18, *W. frac. half of sec.* 19, *S. E. frac.* ¼ *of sec.* 19, *and S. W. frac. quarter of sec.* 20 (4, 9 *on the Big Island, in the Mississippi River*), *of township No.* 4, *of range No.* 9, *cont'g* 538$\frac{90}{100}$ *acres, at* $2 *per acre.*

Dr.								Cr.
			Dollars.	Cents.	No. of acc't.	No. of rec't.	Dollars.	Cents.
	1816, April 17.	By amount of deposit	52	86	26	656		
	" May 11.	By residuary of first installment	211	44	28	690		
			264	30			264	30
For E. fr'n of 18 see page 2905.								

1836, Oct. 3. Jacob Hawkins & Samuel Hawkins bo't S. W. fr. ¼ 18, 4, 9, cont'g 37 acres, @ $1.25, certif. 17,945 ..... 46 25

(W. detached part of the E. frl. ½ of on isl'd .)

Dr. *George Job, for frac'l sect. No.* 18, *of township No.* 4, *of range* 9, *cont'g* 64$\frac{55}{100}$ *acres, at* $1.25 *per acre.* Cr.

		No of acc't.	No. of rec't.	Dollars.	Cents.			No. of acc't.	No. of rec't.	Dollars.	Cents.
1833. Nov. 19.	To pur. money Cert. No. 6239.	154	.....	80	28	1833. Nov. 19.	By cash Pat. dated	154	6239	80	28

52 DR. *George Job, for N. W. fr'l ¼ sect. No. 19, of township No. 4, of range No. 9, cont'g 155.60 acres, at $1.25 per acre.* CR.

		No. of acc't.	No. of rec't.	Dollars.	Cents.						
June 3, 1833	To amount of purchase money of said sect	56	65	194	58		By cash Pat. dated			194	58

E. fr'l ¼ section 19, 4, 9, Charles W. Mecke, Jan'y 25, 1871, certif. 29,590, 249.90 acres, at $1.25 ..... 312 37

DR. *Newton Sowell, for E. ½ S. W. ¼, sect. No. 19, of township No. 4, of range No. 9, cont'g 80 acres, at $1.25 per acre.* CR.

		No. of acc't.	No. of rec't.	Dollars.	Cents.			No. of acc't.	No. of rec't.	Dollars.	Cents.
Sept. 5, 1832	To amount of purchase money of said tract	140	4069	100	00	Sept. 5, 1832	By amount of cash Pat. dated	140	4069	100	00

DR. *Moses Job, for W. ½, S. W. ¼ S. W. ¼, of 19, 4 N, 9 W., cont'g 80 acres, at $1.25 per acre.* CR.

July 4, 1833	To pur. money	150	5764	100	00	July 4, 1833	By cash Pat. dated	150		100	00

53 *Ch's Digarlais, of Madison Co., for S. frac'l ¼ of frac'l 20, S. W. ¼ of 21, & N. E. ¼ sect. No. 29, of township No. 4 N., of range No. 9 W., cont'g 572.77 acres, at $2 per acre.*

DR. CR.

		No. of acc't.	No. of rec't.	Dollars.	Cents.			No. of acc't.	No. of rec't.	Dollars.	Cents.
Sept. 14, 1814	To amount of purchase money of said sect..... Ex'd by D. B. Final certif. No. 84. Pat. dated 19 March, 1819.	1	.....	1,145	54	Sept. 14, 1814	By evidence of confirmed claim, 572.77 acres..... 240 a's, being part of claim No. 97, certif. No. 264. 33.277, being part of claim 1825, certif. 466, for 400 a's.	2	165	1,145	54

See next page for S. E. ¼ sect. No. 29, of township No. 4, of range No. 9.

54 TREASURY DEPARMTENT, REG. OFFICE,
6 *Dec.*, 1802.

To ZACH'S A. BEATTY, Esq.,
Steubenville:

SIR: In answer to that part of your letter of the 6th ult. which relates to the issuing of patents to the assignees of the original purchasers, I have to communicate to you the decision of the Secretary of the Treasury. It is, that whenever an assignment of any section or fraction is made by the person purchasing the same from the United States, the certificate or assignment of the party transferring is to be lodged with the register of the land office until all the payments are fully made; after which, it must be transmitted to the Register of the Treasury of the U. S. along with the final certificate, as an evidence upon which the Sec'y's certificate and the patent may issue to the assignee.

The want of such assignment delays the issuing of a patent to William Satterthwaite, jr., as assignee of James Johnston for section 13, in township No. 7, in the 3d range.

You will please to forward such assignment on the receipt of
55 this, that the patent may be issued.

I am, &c.,

JOSEPH NOURSE,
Register.

OCTOBER 15TH, 1829.

THE REGISTER AND RECEIVER,
Land Office at St. Helena, La.:

GENTLEMEN: Presuming, from the fact of the plats of a great portion of the townships in your district having been returned to this office, and from Mr. Rannells having stated in his last letter that all cases of interfering claims had been settled, that you are now prepared to issue the patent certificates for many of the private claims in your district, I deem it proper to call your attention to that subject at this time.

On reference to the form of the patent certificate transmitted to your office on the 16th of January, 1824 (a copy of which was also enclosed in my letter of the 6th of August, 1824), you will perceive that in no case can the certificate be issued until you shall have received from the principal deputy surveyor a plat of the tract, describing it by
56 its proper sectional number, which plat will accompany the patent certificate when it is forwarded to this office for the patent.

The transfers which have been accumulating for many years will occasion much perplexity, labor, and difficulty as to the issuing of patents for private claims.

As it respects the public lands, a transfer made by the original purchaser on the back of the certificate, and witnessed by the register, is deemed sufficient to entitle the assignee to a patent.

But in all other cases of alienation whatsoever the party claiming the patent must deposit with you the evidence of title, which evidence, if deemed sufficient by you, will be returned to this office, with patent certificate, which should be endorsed, "Papers accompanying this certificate are authenticated in conformity to the laws of the State of Louisiana, and entitle A. B. to a patent for the land."

The subdivision of the confirmed claims will present cases of difficulty and embarrassment, and will require great caution on the part of the officers to protect the interests of the bona fide purchasers.

In cases of this description patents can be issued securing the rights

of all the claimants where a survey of partition has been made
57 and recorded, copies of which, with the evidence of title, regularly certified, as in other cases, will accompany the patent certificate. With the patent certificate there was transmitted a form of the "monthly abstract of certificates granted," which should be *be* forwarded at the close of every month.

These abstracts should always be made on the same sized paper, for convenience in having them bound together.

It being very desirable to commence issuing the private claim patents in your district, I have to request that there may be as little delay as practicable in forwarding the certificates for the surveys that may be now in your office, and that whenever additional surveys are received the certificates for them may be speedily issued.

I am, &c.,

GEORGE GRAHAM,
Commissioner.

58 *Declaration No. 430.*

KASKASKIA, *July 19th*, 1822.

I, William Russell, of St. Louis, State of Missouri, do hereby declare my consent to the provisions of the act of Congress passed on the 2d day of March, 1821, entitled "An act for the relief of the purchasers of the public lands prior to the 1st day of July, 1820," revived and continued in force by the act of 20th April, 1822, entitled "An act supplementary to an act entitled 'An act for the relief of the purchasers of the public lands prior to the 1st day of July, 1820,'" and request that I may have a further credit, agreeably to the 3rd section of the said act of 2d March, 1821, on the balance (exclusive of interest accrued) due or to become due from me as *as* assignee of John Lewis, on account of the purchase money of the following described tract of land (the payment of which has not been completed) held by me, assignee as aforesaid, and purchased of the United States in the district of lands offered for sale at Kaskaskia, viz:

Date of purchase.	Original certificate herewith surrendered.		Tract on which further credit is requested.	No. of section.	No. of township.	No. of range.
	Number.	Date.				
17th April, 1816	231	May 11th, 1816	Fractional section, No. 18	18	4 N.	9 W.
			North fractional half of section No. 19	19	4 N.	9 W.
			Southeast fractional quarter of section No. 19	19	4 N.	9 W.
			Southwest fractional quarter of section No. 20	20	4 N.	9 W.

In testimony whereof I have hereunto set my hand and seal this 19th day of July, 1822.

WM. RUSSELL. [SEAL.]

In presence of—
MICHAEL JONES, *Reg'r.*

Deed from John Lewis & wife to William Russell for the above tract, acknowledged and recorded in Madison County, has been shown to me by Wm. Russell, who retains it.

59 *Relinquishment No.* 21.

KASKAS'A, *Nov.* 30, 1824.

I, Peter Paulus, do hereby declare my consent to the provisions of the act of Congress, passed on the 18th day of May, 1824, entitled "An act to provide for the extinguishment of the debt due to the United States, by the purchase of public lands," and of the act explanatory thereof passed on the 26th day of the same month, and wishing to avail myself of the relief granted by the 1st section of the first mentioned act, I do hereby relinquish to the United States all my right and title to and interest in the following described tract and legal subdivision of tract of land (the payment of which has not been completed) held by me as purchaser & as ass'ee of Rich'd M. Young, who was ass'ee of Russel E. Hancock and purchased in the district of lands offered for sale at Kaskaskia.

Date of purchase.	Certificate of further credit herewith surrendered.		Tract or legal subdivision relinquished, whether section, half section, quarter section, half quarter section, &c.	No. of section.	No. of township.	No. of range.
	Number.	Date.				
Dec. 29, 1818	134	Aug. 22, 1821	E. ½ S. W. q'r	32	13 S.	1 W.
May 13, 1817	332	Sept. 6, 1821	N. E. q'r	11	9 S.	3 W.

And request that the sums paid on account of the purchase money of said lands relinquished be transferred and applied towards completing the payment of the following described tract and legal subdivision of a tract of land not relinquished (the payment of which has not been completed) held by me and purchased as aforesaid, viz:

Date of purchase.	Certificate herewith surrendered.					
	Number.	Date.				
Dec. 29, 1818	134	Aug. 22, 1821	W. ½ S. W. ¼	32	13 S.	1 W.

In testimony whereof I have hereunto set my hand and seal this 18th day of November, 1824.

his
PETER + PAULUS. [SEAL.]
mark.

In the presence of—
Attest:
HENRY CLUTTS.
JOHN WHITAKER.

60 *Relinquishment No.* 21.

1821.

I, Jacob Bowerman, of Randolph, do hereby declare my consent to the provisions of the act of Congress passed on the 2d day of March,

1821, entitled "An act for the relief of the purchasers of the public lands prior to the 1st day of July, 1820," and wishing to avail myself of the relief granted by the 1st section of the said act, do hereby relinquish to the United States all my right and title to and interest in the following described tract and legal subdivision of a tract of land (the payment of which has not been completed) held by me and purchased in the district of lands offered for sale at Kaskaskia, viz:

Date of purchase.	Original certificate herewith surrendered.		Tract or legal subdivision relinquished, whether section, half section, quarter section, half quarter section, &c.	No. of section.	No. of township.	No. of range.
	Number.	Date.				
1818, Nov. 10	1485	1818, Nov. 10	E. half S. E. ¼	25	6 S.	5 W.

And request that the sums paid on account of the purchase money of said lands relinquished, be transferred and applied towards completing the payment of the following described tract and legal subdivision of a tract of land not relinquished (the payment of which has not been completed) held by me and purchased as aforesaid, viz:

Date of purchase.	Original certificate herewith surrendered.		Tract or legal subdivision not relinquished, whether section, half section, quarter section, half quarter section, &c.	No. of section.	No. of township.	No. of range.
	Number.	Date.				
1818, Nov. 10	1485	1818, Nov. 10	W. h'lf S. E. ¼	25	6 S.	5 W.
1819, Feb'y 24	1815	1819, Feb'y 24	W. h'lf S. W. ¼	33	5 S.	5 W.

And I do hereby further request that if after the transferring and applying of the said sums so requested, there shall be any balance (exclusive of interest accrued) due or to become due from me as purchaser on account of the purchase money of any part of said land not relinquished, may have further credit on the same according to the provisions of the 3rd section of the act of Congress aforesaid.

In testimony whereof I have hereunto set my hand and seal this 14th day of Aug't, 1821.

JACOB BOWERMAN. [SEAL.]

In presence of—
MICH'L JONES, *Reg'r.*

61 *Exemplification dated March 20, 1875, of letter of Willis Drummond, Commissioner of Gen'l Land Office.*

Exemplification of M'ch 20, 1875.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
March 20th, 1875.

I, Willis Drummond, Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification from the records of this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

L. S.

WILLIS DRUMMOND
Commissioner of General Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Jan'y 18th, 1872.

Hon. JOHN B. HAY,
House of Rep's:

SIR: I have received, by personal reference from you, a letter dated 10th inst., from J. T. Cooper, of Alton, Ills. This office is also in receipt of a letter, dated 14th ult., from Mr. Cooper direct,
62 and enclosing alleged copies of entries, &c., from the district office at Springfield, Ills.

In reply thereto I have the honor to state that, on examination of the records and files of this office, it appears that the E. ½ of section 19, and the S. W. fr'l ¼ of section 20, T. 4 N., R. 9 W., 3rd P. M., former Edwardsville district, Ills, were entered in conjunction with other tracts, at the then Kaskaskia district office, April 17th, 1816, under the old "credit system," by John Lewis, at $2 per acre. On the same date Mr. Lewis made a payment of $52.86, per receipt No. 656, being the required one-twentieth part of the full amount of the purchase money; and on May 11th, 1816, a further payment of $211.44 was made, per receipt No. 690, making in all $264.30, or one-fourth the full amount of purchase money.

No further payment appears to have been made, and no further action taken in the premises by John Lewis, and the lands became properly subject to forfeiture under the act of May 10, 1800, and should have been so declared in the year 1819.

On the 19th July, 1822, William Russell appeared at the Kaskaskia land office, claiming to be the assignee of the said John Lewis, and
63 as such made declaration No. 430 (now on file in this office), receiving thereon a certificate of further credit. Both the law and regulations prescribed by this office imperatively required that in such cases the evidence of assignment should be filed with the register of the district land office and by him be transmitted to this office, with the other papers without such evidence of assignment, the Commissioner of the General Land Office was constrained by the law to ignore the alleged assignee, and issue patent directly to the original purchaser, even though the said assignee should have made the final payments in the case.

In the case under consideration no evidence of assignment was ever filed in the district office, and none was ever transmitted to this office, with the exception of a memorandum at the bottom of the said declaration No. 430, as follows:

"Deed from John Lewis and wife to William Russell for the above tract, acknowledged and recorded in Madison County, has been shown to me by William Russell, who retains it."

This memorandum is not in the handwriting of the register, who filled up the form, and is not made over but under his signature. It was therefore properly deemed insufficient evidence of assignment by this
64 office, and after waiting, as it appears, nearly two years that this defect might be remedied, the lands comprised in John Lewis' entry were forfeited, and offered at public sale in July, 1824, becoming

thereafter subject again to private entry. Portions of the said lands were subsequently purchased, at private entry, by Jacob and Samuel Hawkins, George Job, Moses Job, and others, but the E. ½ section 19, and S. W. fr'l ¼ sec. 20, T. 4 N., R. 9 W., 3rd p. m., remained vacant public land until entered, the first named tract Jan'y 25, 1871, by Charles W. Mecke, and the latter on May 3rd, 1870, by John W. Bunn.

Relative to the copies of entries and papers submitted by Mr. Cooper in his letter of 14th ult., I have to state that the records and files of this office contain no evidence of any payment whatsoever, whether in cash or by relinquished lands upon the said tracts subsequent to the said payment, by John Lewis, on 11th May, 1816. The monthly abstract of the business of the Kaskaskia land office for the month of July, 1829 (on file in this office), contains no reference to any such transaction as is alleged by the said copies to have occurred in that month and year, and it is very evident that no return of the alleged payment was
65 ever made to the government. In these said copies of entries it is stated that a portion of the final payment on the tracts in contest, was made in the form of a relinquishment of certain of the lands embraced in Lewis' original entry, per "relinquishment No. 21." The files of this office contain two regular series of relinquishments in the Kaskaskia district, one relating to the relief act of March 2d, 1821, and the other to the act of May 18, 1824. On examining these two series, it is found that No. 21, of the first, was executed August 14th, 1821, by Jacob Bowerman, and No. 21 of the latter, by Peter Paulus, under date of Nov. 30, 1824, and both describe different lands from those in controversy.

No other relinquishment No. 21, than the two described, was ever received by this office, nor has any receipt No. 5220 (referred to in these copies) been received.

Mr. Cooper has also submitted, per his letter of 14th ult., a copy of a letter, with enclosure, from Thos. Allen, of St. Louis, dated Nov. 20, 1871. The enclosure purports to be a copy of a final certificate
66 of payment on these lands, issued to William Russell, July 8th, 1829, by S. Bond, register of the Kaskaskia office. It is to be remarked that the journal entry (per copy submitted by Mr. Cooper) of payment, is dated July 2, 1829, and refers to a final certificate of blank number, as bearing the "same date." Yet, the certificate itself is dated July 8, 1829, and reads: "I do certify that on the 2d inst," &c. Further than this, the said certificate is informal, unofficial, and irregular in all respects, and totally dissimilar from the final certificates prescribed by the rules and regulations of this office, of which the Kaskaskia office possessed printed forms.

It is shown by evidence on file in this office, that at the period referred to, there existed in the Kaskaskia and Edwardsville land districts a combination of individuals (some of whom were counterfeiters and others), who by corrupt and illegal practices, and through collusion with the land officers of that day, possessed themselves of large bodies of the most valuable lands in those districts, whereby the gov't and bona fide settlers were extensively defrauded.

67 William Russell is shown to have been a leading and active participant in these frauds.

These facts considered in conjunction with the irregularities, discrepancies and contradictions which mark William Russell's connection with these lands, lead me to the conclusion that he, the said Russell, never had any bona fide claim thereto.

It is probable that John Lewis either died or abandoned the said lands

and Russell by the corrupt influence which he is shown to have exercised, secured from the land officers with whom he was in league, an outside, extra-official show of title, for which the gov't received no consideration.

The entries of Mr. Mecke and Mr. Bunn appear by the records of this office to be regular in all respects, and title having passed from the U. S., I must decline to take any further action in the premises.

Mr. Cooper's letter is herewith returned.

Very respectfully,

WILLIS DRUMMOND,
Commissioner.

68 The said defendant at the time when each of the foregoing papers were offered in evidence objected to the same on the ground that each of said papers were illegal, improper, and irrelevant; and could not possibly have any bearing in the case at bar. But the court at each time overruled the objection and permitted the same to go in evidence; to which ruling of the court at each time the said defendant then and there excepted.

The foregoing was all the evidence introduced on the trial of this cause.

The court found the issue joined for the defendant, on the ground that the premises in controversy on the issuance of the final certificate to William Russell ceased to be a part of the public domain, and were not thereafter subject to entry by individuals or of sale by the United States, and to which finding the plaintiff then and there excepted; and upon which finding the court rendered judgment that the defendant recover of the plaintiff his costs herein expended; and that he have execution therefor. To which rulings the plaintiff then and there excepted. The court also found that the value of the land in dispute amounts to more than five thousand dollars.

69 To preserve all which matters of record plaintiff asks that this, his bill of exceptions be signed and sealed by the court, which is done.

[SEAL.] S. H. TREAT.

(Endorsed:) Filed July 25, 1879.

And afterwards, to wit, on said 25th day of July, in the year last aforesaid, came said plaintiff, by his attorney, and filed in said clerk's office his bond for appeal, in the words and figures following, to wit:

Bond on writ of error.

Supreme Court of the United States. In error.

IN RE JAMES H. SIMMONS
vs.
AUGUST WAGNER.

Know all men by these presents, that we, James H. Simmons, of Philadelphia, Pa., and George B. Burnett, of the county of Madison, and State of Illinois, are held and firmly bound unto the above named August Wagner in the sum of five hundred dollars to be paid to the said August Wagner, his executors or administrators, to which payment well and truly to be made, we bind ourselves and each of us, jointly

70 and severally, and our and each of our heirs, executors, and ad-

ministrators firmly by these presents. Sealed with our seals and dated this 15th day of July, 1879.

Whereas the above named James H. Simmons hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the United States circuit court in and for the southern district of Illinois, at the June term, 1879, thereof:

Now, therefore, the condition of this obligation is such that if the above named James H. Simmons shall prosecute his said writ of error to effect and answer all damages & costs, if he shall fail to made good his plea, then this obligation shall be void, otherwise to remain in full force and effect.

JAMES H. SIMMONS. [L. S.]
GEORGE B. BURNETT. [L. S.]

Sealed and delivered in the presence of, as to Jas. H. Simmons:
GEORGE RUSSELL, *Philadelphia, Pa.*
As to Geo. B. Burnett:
A. L. BROWN, *Edwardsville, Illinois.*

Approved.

S. H. TREAT,
Dist. Judge.

(Endorsed:) Filed July 25, 1879. J. A. Jones, clerk.

71 UNITED STATES OF AMERICA, *ss:*

In circuit court for the southern district Illinois.

I, John A. Jones, clerk of said court, do hereby certify that the foregoing is a true and correct copy of all the papers filed and proceedings thereon had in a certain cause wherein James H. Simmons is plaintiff and August Wagner is defendant, as fully as the same appear of file and of record in my said office.

Witness my hand and the seal of said court, at Springfield, in said district, this 22d day of September, in the year of our Lord eighteen hundred and seventy-nine, and of our Independence the one hundred and fourth year.

[SEAL.] A. JONES, *Clerk.*

72 *Writ of error to Supreme Court.*

Supreme Court of the United States, of the October term, 1879.

JAMES H. SIMMONS *vs.* AUGUST WAGNER. } In ejectment.

Afterwards, to wit, on the first Monday of October, in this said term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said James H. Simmons, by G. B. Burnett and Clinton L. Conkling, his attorneys, and says that in the record and proceedings aforesaid, there is manifest error in this, to wit: That—

1st. The court erred in receiving in evidence the copy from Journal A, records of the land office at Kaskaskia, marked Exhibit 1, on page 16 of this record, and also erred in receiving Exhibit 2, on page 18

of this record, and Exhibit 3 on page 19 of this record, and the return on pages 21 & 22 of this record, and Exhibit 6, on page 23, and the so
73 called final certificate on page 24, and deposition of Harry Wilton, on page 25, and the deed from John Lewis to Wm. Russell, on page 29, and the deed from John Lewis & wife to Wm. Russell, on page 33, because they do not show a title to the lands in controversy in Wm. Russell.

2nd. The court erred in receiving Exhibit 2, on page 18 of this record, as part of the evidence of title in defendant, when it should have been rejected.

3rd. The court erred in receiving Exhibit 3, on page 19 of this record as part of the title of defendant, when it should have been rejected.

4th. The court erred in receiving the letter to the General Land Office at Washington, of July, 1829, on pages 21 & 22, as part of the evidence of the title of said defendant, when it should have been rejected.

5th. The court erred in receiving the so-called final certificate copied on page 24 of this record, as part of the title of said defendant, when it should have been rejected.

74 6th. The court erred in receiving the deposition of Harry Wilton, on page 23, in evidence, when it should have been rejected, said Wilton testifying that he had never seen said Bond write, and he judged of his signature by comparison only and from having seen what was alleged to have been his signature to a commission once only.

7th. The court erred in receiving the deed and power of attorney from John Lewis to Wm. Russell, on page 29, in evidence, when it should have been rejected.

8th. The court erred in receiving the copy of deed from John Lewis and wife to Wm. Russell, on page 33, in evidence, when it should have been rejected.

9th. The court erred in rendering judgement for the defendant.

10th. The judgement of the court was contrary to the law.

11th. The judgement of the court was contrary to the evidence,
75 by reason whereof the said judgement ought to have been given for the said James H. Simmons against the said August Wagner; and the said James H. Simmons prays that the judgement aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things of which he may have been deprived by reason of said judgement.

G. B. BURNETT,
CLINTON L. CONKLING,
Attorneys for Plaintiffs.

(Indorsement on cover:) No. 1040. James H. Simmons, plaintiff in error, vs. August Wagner. S. Illinois C. C. U. S. Filed 31st October, 1879.

SUPREME COURT OF THE UNITED STATES.

NO 1040.

JAMES H. SIMMONS, Plaintiff in Error.

vs.

AUGUST WAGNER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF ILLINOIS.

STATEMENT OF THE CASE.

SUPREME COURT OF THE UNITED STATES,

NO. 1040.

JAMES H. SIMMONS, Plaintiff in Error.

vs.

AUGUST WAGNER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF ILLINOIS.

STATEMENT OF THE CASE.

This was an action in ejectment brought by James H. Simmons, plaintiff in error, against August Wagner, defendant in error, in the
7*. said Circuit Court, judgment being rendered at the June Term, 1879, in favor of defendant.

The land in controversy is the east fractional half of section nineteen, in township four north of range nine west, third principal meridian, in the county of Madison, State of Illinois, and is in the possession of the defendant in error.

Upon the trial of the cause the plaintiff, James H. Simmons, intro-
8. duced a patent in due form from the United States for said land, dated April 25, 1871; to the introduction of this patent in evidence the de-
9. fendant then and there objected for the reason that the said patent was issued without authority of law, the government having long before parted with all its interest in said real estate, but the court allowed the same to be read to which plaintiff then and there excepted.

The defendant then introduced in evidence the original land office books of the Kaskaskia district, State of Illinois, by which it appeared from Journal A, page 235, of the Register of the land office of Kaskaskia, that on April 17th, 1816, the land in controversy and other lands, making in all 528.60 acres, were entered by John Lewis, at the rate of $2 per acre—from Ledger B, page 87, of the Receiver of the

*References so made in this abstract, are to the pages of the *printed* record.

Land Office; that on the same day Lewis was charged with the price of the 528.60 acres at $2 per acre, making..... $1,057 20
That on the same day he paid one-twentieth of the purchase money..... $ 52 86
And on May 11, 1816, being within forty days, he paid..... 211 44
That on July 2, 1829, he was credited
By sale public land..... 513 76
By sundries same date..... 279 14

Making his credits equal to his debts and balancing the amount..... $1,057 20

Across the face of this entry upon the original record was written in pencil "Reported as forfeited 1st Oct., 1821:
Bal. due..... $792 90
Int. till now..... 237 60

$1,030 50"

10. Plaintiff at the time objected to the introduction of the record, which objection was overruled, to which ruling of the court the plaintiff then and there excepted.

It also appeared from Journal D of the Register's office at Kaskaskia, page 291, under date of July 2nd, 1829, that the credit of $513.76 was for fractional section 18, and northwest fractional quarter section 19, township 4, N. range 9, W., containing 256.88 acres, reliquished to the United States by William Russell, per his relinquishment No. 21, dated July 2nd, 1829, being part of a tract purchased 17 April, 1816, at $2 per acre—and from page 292 of same record, and under date of July 2nd, 1829, it appears that the credit of $279.14 was for the following sums, which after the relinquishment of the fractional section 18, and northwest fractional quarter section 19, township 4, N. range 9, W., were received in full for the northeast and southeast fractional quarter section 19, and southwest fractional quarter section 20, same township and range, containing 271.72 acres, being the part not relinquished, purchased April 17, 1816, at $2 per acre, per Receiver's receipt No. 5220, dated July 2d, 1829, and final certificate (number not given) of same date, granted to William Russell:

Cash..... $174 46
Discount on ac. at 37½ per ct..... 104 68

From Book D. Applicant's Entry Book, page 562, it appears that William Russell produced a receipt from the Receiver of public moneys, No. 5220, dated the 2d day of July, 1829 for the sum of $174.46, which with the discount therein stated and allowed of $104. 68, was in full of the balance due or to become due, for the same lands last above mentioned, purchased April 17, 1816.

11. The defendant also introduced what he claimed to be the letter-book of Shadrack Bond, containing a letter said to have been written by Bond to the Department at Washington, in July, 1829, stating that therewith he transmitted his returns of land paid for under Act of March 21, 1828, from 1st to 3d instant inclusive—his abstract of lands relinquished in the same time—the receipts issued by the Receiver, from No. 5211 to 5225 inclusive, cancelled, together with final

certificates numbers 833 to 847 inclusive. Plaintiff at the time objected to the introduction of the record, which objection was overruled, to which ruling of the court the plaintiff then and there excepted.

This was followed by a letter purporting to be from G. W. Graham,
12. and addressed to Edward Humphreys, dated General Land Office, September 12, 1829, acknowledging receipt of a letter of July 4th, 1829, and returns under credit system, from the first to the third of that month, and three cancelled certificates of stock issued at Kaskaskia, and stating that the last had been compared with the Register's abstract thereof and found to be correct. To the introduction of this letter the plaintiff then and there objected, which objection was overruled, and to which ruling of the court the plaintiff then and there excepted. The defendant then introduced a paper which he claimed to be the final certificate, and which is as follows:

"LAND OFFICE, AT KASKASKIA, July 8th, 1829.

I do certify that on the 2d instant Wm. Russell filed in this office a receipt, No. 5220, for $174.46 in cash, which is full payment for the N. E. fr. ¼ sec. 19, S. E. fr. ¼ 19, and S. W. fr. ¼, 20, in T. 4, N. of R. 9, West.

S. BOND, Regr.

Which paper was endorsed as follows:

Receipt for lands on Big Island, final payment. No. 2, Book 20, No. 1949, p. 48.

This certificate was not on any printed form but was entirely writ-
13. ten and was accompanied by the deposition of Harry Wilton, who stated that he was 84 years of age; was acquainted with Shadrack Bond from 1814 to his death; knew him well at Kaskaskia and Vandalia, and from him, as Governor of Illinois, received a commission as sheriff of Washington county, Illinois; knew that he was Register of Land Office at Kaskaskia, Illinois; received his commission as sheriff of Washington county in 1819; thinks he has seen letters from Shadrack Bond to Benjamin Bond, but is not positive; supposes he is acquainted with Bond's handwriting because he has seen it on his commission; according to the best of his knowledge considers the signature on the certificate above referred to, to be the signature of Shadrack Bond; from his recollection thinks signature on above and on his commission are the same, but does not remember of ever having seen him write, and only believes the signature on the so-called certificate to be that of Governor Bond because it resembles the sig-
14. nature on his commission.

To the introduction of this certificate and the deposition the plaintiff at the time objected, which objection was overruled, and the plaintiff then and there excepted.

The defendant also introduced a certified copy of "deed and power of attorney" from John Lewis to William Russell, dated July 8, 1815, conveying the pre-emption right of said Lewis to fractional section 18, the north fractional half and southeast fractional quarter of section 19 and southwest fractional quarter section 20, all in township 4 north, range 9 west, in Madison county, Territory of Illinois, and
15. empowering said Russell "to enter said land and pre-emption and

do every other matter and thing that he may deem proper or necessary towards completing the title for the same that" he "the said Lewis could do, if" he "were personally present." To the introduction of this deed the plaintiff then and there objected, which objection was overruled, and the plaintiff then and there excepted.

16. Also deed from John Lewis and wife to William Russell, dated Sept. 13, 1816, for the same lands as in last deed; consideration, $55.00 cash, $264.30 paid on April 17, 1816, by Russell to receiver of public moneys at Kaskaskia, on pre-emption right of Lewis in said lands. Both of said conveyances were acknowledged before a justice of the peace and were not accompanied by any certificate of magistracy. To the introduction of this deed the plaintiff at the time objected, which objection was overruled, and the plaintiff then and there excepted.

17. It is admitted that defendant and his grantors from Russell have a regular chain of title all properly made and recorded, have paid all taxes and have been in undisturbed and undisputed possession until the plaintiff claimed the same.

This was all the evidence produced by defendant.

The plaintiff thereupon introduced a letter from Willis Drummond, Commissioner of the General Land Office, to plaintiff, dated Dec. 12, 1871, stating that the east one-half of section 19, township 4 north, range 9 west, third principal meridian, Illinois, with other tracts, was entered at Kaskaskia, April 17, 1816, by John Lewis under the old credit system, at $2 per acre. He paid $52.86, per receipt No. 656 then; on May 11, 1816, he paid $211.44, per No. 690,
18. making in all $264.30, or one-half of the purchase money. He made no further payment, as appears from the records, and the lands were subject to forfeiture undet act of May 10, 1800, but records do not show a formal forfeiture at that time. On July 10, 1822, William Russell at Kaskaskia office, claiming to be assignee of Lewis, made declaration, No. 430, and received certificate of further credit.

The laws, rules and regulations of this office imperatively required that in such cases the evidence of assignment should be filed with the registers of the district land offices and transmitted by them to this office. Without such evidence of assignment the Commissioner of the General Land office was required by law to ignore the assignee.

In this case no evidence of assignment was ever filed in the district office, and none was transmitted to this office, with the exception of a memorandum at the bottom of said declaration No. 430, as follows: "Deed from John Lewis and wife to William Russell for the above tract, acknowledged and recorded in Madison county, has been shown to me by William Russell, who retains it." This memorandum is not in the hand writing of the Register, and is not made over, but under his signature. It was, therefore, deemed insufficient evidence of assignment by this office, and after waiting, as it appears, nearly two years, that this defect might be remedied, the lands comprised in John Lewis' entry were forfeited, and offered at public sale in July, 1824, becoming thereafter subject to private entry; and the said tract remained vacant public land until January 25, 1871, when it was entered in due form of law by Charles W. Mecke, and on April 25, 1871, patent issued to Simmons as assignee of Mecke.

The records and files of this office contain no evidence of an alleged final payment by relinquishment of certain lands (per relinquishment No. 21,) together with cash and forfeited land stock, by said Russell, in July, 1829. No payment of cash and no surrender of forfeited land stock by said Russell have ever been reported to this office. Further than this, relinquishments No. 21, of the two series, issued by the district office at Kaskaskia, one under the relief act of March 2d, 1821, and the other under the act of May 18, 1824, are both on file in this office, and are found to have been made, the first dated August 14, 1821, by Jacob Bowerman, and the other dated November 30, 1824, by Peter Paulens, and both describe totally different lands from those under consideration.

This letter also states that there existed at the Kaskaskia district a corrupt combination of individuals, of whom William Russell, and the then Register at Kaskaskia, were a part, who by illegal practices, possessed themselves of valuable lands; that any irregularities
19. in the history of these lands are without doubt attributable to a collusion between the said Russell and the Register, by which some false color of title may have been passed to Russell outside of the official records.

Exemplification, dated December 26, 1871, of an original letter of October 9, 1816, of B. Stephenson to Josiah Meigs, from the files of the General Land Office, states among other things, that William Rus-
20. sell was at Kaskaskia in 1814; and was concerned in certain question-
21. able transactions, as was also the then Register of that Land Office, in connection with the public lands.

Exemplification, dated January 9th, 1872, from the records and
22. files of the General Land Office is a copy of the official record of the
23. entry made by Lewis as stated in detail in Commissioner Drummond's
24. letter of December 12, 1871. (See page 4 herein), and of the sales
25. made after the lands were forfeited and offered for sale in July, 1824, and of the sale of the tract in question to Mecke, who assigned to plaintiff.

Also of letter from Treasury Department, Register's Office, 6th De-
26. cember 1802, from Joseph Nourse, Register, communicating the decision of the Secretary of the Treasury, that whenever an assignment of any section or fraction is made by the person purchasing the same from the United States, the certificate or assignment is to be lodged with the Register of the Land Office until all payments are made, after which it must be transmitted to the Register of the Treasury of the United States along with the final certificate, as an evidence upon which the Secretary's certificate and the patent may issue to the assignee.

Also of letter of October 15, 1829, from George Graham, Commissioner, to the Register and Receiver of the Land Office at St. Helena, La., which says, referring to the public lands, "a transfer made by the original purchaser on the back of the certificate and witnessed by the Register, is deemed sufficient to entitle the assignee to a patent. But in all other cases of alienation whatsoever, the party claiming the patent must deposit with you the evidence of title, which evidence if deemed sufficient by you, will be returned to this office with the patent certificate."

27. Also of Declaration No. 430, referred to in Commissioner Drummond's letter of December 12. 1871, (see p. 4 herein), wherein Russell, in July, 1822, claimed to be Lewis' assignee, and got further credit on the lands entered by Lewis, and which declaration had below it and beneath the Register's name the note quoted in Commissioner Drummond's letter. (See p. 4 herein.)

28. Also the relinquishments, numbered 21, each referred to in Commissioner Drummond's letter of December 12, 1871, and showing the facts as stated therein by him. (See p. 4 herein.)

29. Exemplification dated March 20, 1875, is a copy of a letter of Willis Drummond, Commissioner of General Land Office, as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Jan'y. 18th, 1872.

Hon. JOHN B. HAY,
House of Rep's:

SIR: I have received, by personal reference from you, a letter dated 10th inst., from J. T. Cooper, of Alton, Ills. This office is also in receipt of a letter, dated 14th ult., from Mr. Cooper direct, and enclosing alleged copies of entries, &c., from the district office at Springfield, Ills.

In reply thereto I have the honor to state that, on examination of the records and files of this office, it appears that the E.½ of section 19, and the S. W. fr'l ¼ of section 20, T. 4 N., R. 9 W., 3rd P. M., former Edwardsville district, Ills, were entered in conjunction with other tracts, at the then Kaskaskia district office, April 17th, 1816, under the old "credit system," by John Lewis, at $2 per acre. On the same date Mr. Lewis made a payment of $52.86, per receipt No. 656, being the required one-twentieth part of the full amount of the purchase money; and on May 11th, 1816, a further payment of $211.44 was made, per receipt No. 690, making in all $264.30, or one-fourth the full amount of purchase money.

No further payment appears to have been made, and no further action taken in the premises by John Lewis, and the lands became properly subject to forfeiture under the act of May 10, 1800, and should have been so declared in the year 1819.

On the 19th of July, 1822, William Russell appeared at the Kaskaskia land office, claiming to be the assignee of the said John Lewis, and as such made declaration No. 430, (now on file in this office), receiving thereon a certificate of further credit. Both the law and regulations prescribed by this office imperatively required that in such cases the evidence of assignment should be filed with the register of the district land office and by him be transmitted to this office, with the other papers without such evidence of assignment, the Commissioner of the General Land Office was constrained by the law to ignore the alleged assignee, and issue patent directly to the original purchaser, even though the said assignee should have made the final payments in the case.

In the case under consideration no evidence of assignment was ever filed in the district office, and none was ever transmitted to this office, with the exception of a memorandum at the bottom of the said declaration No. 430, as follows:

"Deed from John Lewis and wife to William Russell for the above tract, acknowledged and recorded in Madison County, has been shown to me by William Russell, who retains it."

This memorandum is not in the handwriting of the register, who filled up the form, and is not made over but under his signature. It was therefore properly deemed insufficient evidence of assignment by this office, and after waiting, as it appears, nearly two years, that this defect might be remedied, the lands comprised in John Lewis' entry were forfeited, and offered at public sale in July, 1824, becoming thereafter subject again to private entry. Portions of the said lands were subsequently purchased at private entry, by Jacob and Samuel Hawkins, George Job, Moses Job and others, but the E. ½ section 19, and S. W. fr'l. ¼ section 20, T. 4 N., R. 9 W., 3d p. m., remained vacant public land until entered, the first named tract January 25, 1871, by Charles W. Mecke, and the latter on May 3d, 1870, by John W. Bunn.

Relative to the copies of entries and papers submitted by Mr. Cooper in his letter of the 14th ult., I have to state that the records and files of this office contain no evidence of any payment whatsoever, whether in cash or by relinquished lands upon the said tracts, subsequent to the said payment by John Lewis on the 11th of May, 1816. The monthly abstract of the business of the Kaskaskia land office for the month of July, 1829, (on file in this office), contains no reference to any such transaction, as is alleged by the said copies to have occurred in that month and year, and it is very evident that no return of the alleged payment was ever made to the government. In these said copies of entries it is stated that a portion of the final payment on the tracts in contest was made in the form of a relinquishment of certain of the lands embraced in Lewis' original entry, per "relinquishment No. 21." The files of this office contain two regular series of relinquishments in the Kaskaskia district, one relating to the relief act of March 2d, 1821, and the other to the act of May 18th, 1824. On examining these two series, it is found that No. 21, of the first, was executed August 14th, 1821, by Jacob Bowerman, and No. 21, of the latter, by Peter Paulus, under date of Nov. 30, 1824, and both describe different lands from those in controversy.

No other relinquishment No. 21, than the two described, was ever received by this office, nor has any receipt No. 5220 (referred to in these copies) been received.

Mr. Cooper has also submitted, per his letter of 14th ult., a copy of a letter, with enclosure, from Thomas Allen, of St. Louis, dated Nov. 20th, 1871. The enclosure purports to be a copy of a final certificate of payment on these lands, issued to William Russell July 8th, 1829, by S. Bond, register of the Kaskaskia office. It is to be remarked that the journal entry (per copy submitted by Mr. Cooper) of payment is dated July 2d, 1829, and refers to a final certificate of blank number, as bearing the "same date." Yet the certificate itself is dated July 8, 1829, and reads: "I do certify that on the 2d inst.," &c. Further than this, the said certificate is informal, unofficial and irregular in all respects, and totally dissimilar from the final certificates prescribed by the rules and regulations of this office, of which the Kaskaskia office possessed printed forms.

It is shown by evidence on file in this office that at the period referred to, there existed in the Kaskaskia and Edwardsville land districts a combination of individuals (some of whom were counterfeiters and others) who by corrupt and illegal practices, and through collusion with the land officers of that day, possessed themselves of large bodies of the most

valuable lands in those districts, whereby the government and bona fide settlers were extensively defrauded.

William Russell is shown to have been a leading and active participant in these frauds.

These facts, considered in conjunction with the irregularities, discrepancies and contradictions, which mark William Russell's connection with these lands, lead me to the conclusion that he, the said Russell, never had any bona fide claim thereto.

It is probable that John Lewis either died or abandoned the said lands and Russell, by the corrupt influence which he is shown to have exercised, secured from the land officers with whom he was in league, an outside, extra-official show of title, for which the government received no consideration.

The entries of Mr. Mecke and Mr. Bunn appear by the records of this office to be regular in all respects, and title having passed from the U. S., I must decline to take any further action in the premises.

Mr. Cooper's letter is herewith returned.

Very Respectfully,

WILLIS DRUMMOND,

Commissioner.

The defendant at the time when each of the foregoing papers were offered in evidence, objected to the same on the ground that each of said papers were illegal, improper and irrelevant, and could not possibly have any bearing in the case at bar. But the court at each time overruled the objection and permitted the same to go in evidence; to which ruling of the court at each time the said defendant then and there excepted.

The foregoing was all the evidence:

The court found for the defendant on the ground that the premises in controversy, on the issuance of the final certificate to William Russell, ceased to be a part of the public domain and were not thereafter subject to entry by individuals or of sale by the United States, and to which finding the plaintiff then and there excepted, and upon which finding the court rendered judgment; to which ruling the plaintiff then and there excepted. The court found the value of the land in dispute to be more than five thousand dollars.

The bill of exceptions was then signed and sealed by the judge.

ERRORS ASSIGNED.

James H. Simmons, the plaintiff in error, by his attorney and counsel, now assigns the following separate and specific errors, which appear in the foregoing proceedings and rulings of the Circuit Court:

1. The court erred in receiving in evidence Journal A, records of the Land Office at Kaskaskia, page 235, Register's book, (record p. 9), showing the purchase of the land in controversy by Lewis on April 17, 1816, because irrelevant to issue, showing no legal title nor tending to show

any, in defendant or his grantors, nor proving any title in them and not being competent evidence as against the patent.

2. The court erred in receiving in evidence Ledger B, page 87, Receiver's book of the Land Office at Kaskaskia, (record p. 9), being an account of debits and credits with John Lewis, relative to the land in controversy, because irrelevant to the issue, showing no legal title nor tending to show any in defendant or his grantors, nor proving any title in them and not being competent evidence as against the patent, and being otherwise improper.

3. The court erred in receiving the book marked Shadrack Bond's Letter Book, and the supposed letter, therein copied, to the General Land Office at Washington, of July, 1829, (Record, p. 10, 11) purporting to show the transmittal to the General Land Office of receipts 5,211 to 5,221 and final certificates 833 to 847, etc., because the said letter book is not an official record, but a private memorandum; that the original letter or a duly certified copy thereof is the only proper evidence of the facts sought to be proven; that the letter offered is not shown to be a copy of an original which could not be produced; has no signature, and is not duly authenticated and is irrelevant to the issue and otherwise improper.

4. The court erred in receiving in evidence the letter of G. W. Graham, of Sept. 12, 1879, addressed to Edward Humphrey's, (Record, p. 12,) referring to letter as "your" letter of 4th of July, 1829, containing returns under credit system from the 1st to the 3d of that month, together with three cancelled certificates of stock issued at Kaskaskia, and stating that the last had been compared with the Register's abstract and found correct; because it is irrelevant, was not shown to have any connection with previous testimony and was not duly authenticated, and no proof was given of the signature of G. W. Graham and is otherwise improper.

5. The court erred in receiving what is called the original final certificate, (Record, p. 12,) which is as follows:

LAND OFFICE AT KASKASKIA,
July 8th, 1879.

I do certify that on the 2d instant Wm. Russell filed in this office a receipt, No. 5,220, for $174.46 in cash, which is in full payment for the ne fr ¼ sec. 19, se fr ¼ 19 and sw fr ¼ 20 in T. 4 n, of R. 9 west.

S. BOND, Reg'r.

The same being entirely written and on no printed form; and also in receiving the accompanying deposition of Harry Wilton, who testified (Record, p. 13,) that he was acquainted with S. Bond's handwriting, having seen it on his (Wilton's) commission and thinks the signature to the foregoing certificate is the signature of Shadrack Bond; that comparing the signature with that on his commission they are, as he recollects, the same; that he don't remember of seeing Bond write and the only reason he has for believing that the signature on the certificate is that of Governor Bond is because it resembles the signature on his commission.

The plaintiff objected to the certificate on the ground that it is not a final certificate in form or substance; that it is not an official paper; that the signature of S. Bond thereto was not proven; that it is irrelevant to the issue; shows no legal title nor tends to show any in defendant or his

grantors, and is not competent evidence as against the patent and is otherwise improper.

And he also objected to the testimony of Harry Wilton because he was incompetent to prove Bond's handwriting, and because Wilton's commission was not produced, nor was the signature thereto proven to be, nor to have been admitted to be, the signature of Bond, and was therefore not admissible for the purposes of comparison, if that even was allowable, and that Wilton judged only by comparison and because said testimony was otherwise improper.

6. The court erred in receiving in evidence the "deed and power of attorney" from Lewis to Russell, dated July 8, 1815, (Record, p. 14,) and deed from Lewis to Russell, dated September 13, 1816, (Record, p. 16.,) because as an assignment upon which to found the issue of a final certificate, under the law and rules of the Department, they are not good, no clerk's certificate being attached, and they never having been filed in the proper office, they are irrelevant to the issue, showing no legal title nor tending to show any in the defendant or his grantors, and not being competent evidence as against the patent, and otherwise improper.

7. The court erred in rendering judgment for the defendant, on the ground that the premises in controversy on the issuance of the final certificate to Wm. Russell ceased to be a part of the public domain, and were not thereafter subject to entry by individuals, or to sale by the United States, because there is no proper proof of assignment from Lewis to Russell; because there is no proof that Wm. Russell was entitled to or ever received a final certificate; because no final certificate was shown or proven; because there was no proof that the laud became segregated from the public domain; because the lands were, under the law, forfeited and afterwards entered by patentee's assignor; because the legal title is in the United States until a patent issues; because in ejectment, which is a suit at law, the patent is conclusive and an equitable title, which is the most defendant can claim, cannot be set up as a defense where mistake or fraud are not shown; and because of admitting the evidence of the defendant, hereinbefore specifically objected to, and for other reasons apparent on the record.

A. L. KNAPP, Attorney,
with whom
CLINTON L. CONKLING, is Counsel for Plaintiff in Eeror.

POINTS AND AUTHORITIES SUBMITTED ON BEHALF OF PLAINTIFF IN ERROR.

I.

There was no proof of an assignment or conveyance by Lewis to Russell such as could be recognized by the Department. The deeds from Lewis to Russell are not properly certified. The evidence of assignment or conveyance was required to be filed in the General Land Office. This was not done; but by memorandum at bottom of declaration No. 430 it may be that a deed was *shown* to the Register in 1822, and *retained* by Russell under circumstances indicating fraud.

The laws of the United States and not of the State are to govern in determining whether the title has passed from the government; and the law, and the instructions sent from the Treasury Department must have been followed by the register and receiver:

Record pp. 14 to 17, 10, 27, 17, 18, 23, 24, 26 to 32.

Abstract pp. 3, 4, 2, 6, 5, 7 and 8.

From Public Lands, etc., 1838, vol. 1, Act May 10, 1800, sec. 7; Act July 2, 1836, sec. 2, to confirm sales, etc.

From same work, vol. 2, Instructions, p. 231, dated Treasury Department, Dec. 6, 1802;

From same work, vol. 2, Insrructions, p. 257, dated Treasury Department, July 5, 1805;

From same work, vol. 2, Instructions, p. 269, dated Treascry Department, Auguut 22, 1807;

From same work, vol. 2, Instructions, p. 307, dated General Land Office, May 5, 1821;

From same work, vol. 2, Instructions, p. 354, dated Attorney General's Office, August 17, 1821;

From same work, vol. 2, Instructions, p. 106, dated Attorney General's Office, August 10, 1836;

Wilcox v. Jackson, 13 Peters 497;

Bell v. Hearne, 19 Howard 252;

Parker v. Duff, 47 Cal. 554;

Wilson v. Mason, 1 Cranch 97.

II.

The lands in dispute were declared to be forfeited by the General Land Office and were offered at public sale in July, 1824, and not being then sold, they became subject to private entry afterwards and remained so until purchased by plaintiff's assignor in 1871. The courts, in the absence of other evidence, will presume in favor of the official action of the government officers, that the forfeiture was made, and all the necessary steps taken under the laws and that the patent issued legally. And upon him who assails the patent for want of power in the officer by whom it was made rests the burden to establish this fact, and no presumption will be indulged that the Commissioner did not do his duty in such case.

Record pp. 9 (Ledger B p. 87 Receiver's Book with memorandum of forfeiture across its face) 23, 24, 17, 18, 30 to 32, 8.

Abstract pp. 1, 5, 4, 6 and 7.

Aldrich v. Aldrich, 37 Ill. 32; Moore v. Hunter, 1 Gil. (Ill.) 317; Bagnell v. Broderick, 13 Peters 450; Minter v. Crommelin, 18 How. 87; Cofield v. McClelland, 16 Wall. 331; United States v. Arredondo, 6 Peters 728; Strother v. Lucas, 12 Peters 437, and cases there cited.

III.

There can be no outstanding claim in Lewis or his heirs because his rights were forfeited for non-payment of purchase money according to the

terms of the original purchase, and it is not pretended that he claimed any further credit or made any final payment under any extension. His rights were concluded by forfeiture in 1821 and offering lands at public sale in 1824 and making them again subject to private entry.

Record pp. 10, 12, 18, 23, 27, 30.

Abstract pp. 2, 4 to 7.

For authorities see Nos. II. and V.

IV.

Neither Lewis nor Russell made final payment and the decision of the Commissioner on this point and that there was no assignment filed as required by the law and the rules of the Department is final and conclusive in this case.

The decision of the proper officer acting within the scope of his authority that certain antecedent acts which were required had not been performed cannot be attacked in this case.

Record pp. 9, 14, to 19, 23, 28 to 32.

Abstract pp. 1, 3 to 6 and 8.

Johnson v. Townsley 13 Wallace 72; Le Roy v. Clayton 2 Sawyer 493; Doll v. Meador 16 Cal. 295; Hosmer v. Wallace 47 Cal. 461; Gray v. McCance 14 Ill. 343; McGehee v. Wright 16 Ill. 555; Rutledge v. Murphy 51 Cal. 388; Mitchell v. Cobb 13 Ala. 137.

V.

The defendant must clearly show that he or his grantors have complied with the law and all legal requirements of the Land Department. Until he performs all these prerequisites, he has no vested interest in the premises and the lands do not become segregated from the public domain. Neither Lewis nor Russell complied with these conditions (see Nos. I. and IV.) and so did not acquire such a right as will enable the defendant who claims under them, to set up any defense to this action.

Record pp. 9, 14 to 19, 27, 30 to 32.

Abstract pp. 1, 3 to 5 and 6 to 8.

Wilson v. Mason 1 Cranch 99, 100; the Yosemite Valley case, 15 Wall. 77; Shepley et al v. Cowan 1 Otto 330; Frisbie v. Whitney 9 Wall. 187. See No. II. and authorities there cited.

VI.

The pretended final certificate, dated July 8, 1879, is not a genuine final certificate in form or substance. It is unofficial and irregular, and is not sufficient to found a defense upon in this action.

Record pp. 10, 12, 18, 28, 29, 31.

Abstract pp. 2 to 4, 6 to 8.

From Public Lands, etc., 1838, vol. 2, Instructions, p. 257, Circular to Registers dated July 5, 1805;

From Public Lands, etc., 1838, vol. 2, Instructions, p. 352, Circular to Registers dated August 17, 1821, sec. 8;

From Public Lands, etc., 1838, vol. 2, Instructions, p. 440, Circular to Registers dated March 9, 1831;

From Public Lands, etc., 1838, vol. 2, Instructions, p. 445, Circular to Registers dated May 25, 1831.

VII.

The signature of the Register to the so-called final certificate was not proved by competent testimony. The signature cannot be proved by comparison in this case, nor is it enough that the witnesses may have seen the signature of the party to other instruments, unless they are shown to have been genuine and to have been recognized by the party as having been signed by him.

Record pp. 12, 13.

Abstract p. 3.

Fail & Nabb v. Goodtitle, Breese (Ill.) 156; Putnam v. Wadley 40 Ill. 396; Pate v. People 3 Gilman (Ill.) 644; Brobston v. Cahill 64 Ill. 356.

VIII.

There being no sufficient proof in the case to show that the land became segregated from the public domain there is no title in defendant—not even an equitable title of such a character as would be available in equity, much less as a defense against an action in ejectment.

Two distinct systems of jurisprudence prevail in Illinois—one of equity and one of law—and the same distinction is preserved in the United States courts.

Aholtz v. Zellar, 88 Ill. 24; Johnson v. Watson, 87 Ill. 535; Herrell v. Sizeland, 81 Ill. 457; Fisher v. Eslaman, 68 Ill. 82; Escherick v. Travers, 65 Ill. 381; Wales v. Bogue, 31 Ill. 464; Baird v. Wolf, 4 McLean 549; Dodge v. Perez, 2 Sawyer 645; Larriviere v. Madegan, 1 Dillon 455.

Escherick v. Travers 65 Ill. 381; Gibson v. Chouteau 13 Wall 92; Fenn v. Holme 21 Howard 481.

ARGUMENT.

The general features of this case are: an entry of the land in controversy by John Lewis, under the old credit system, in 1816, an assignment alleged to have been made by him to Wm. Russell, under which Russell, it is claimed, as assignee, perfected the entry and in July, 1829, received a final certificate. The defendant claims title through Russell.

The validity of the assignment to Russell, the performance by him of the acts necessary to complete the entry and entitle him to the land and the genuineness of the final certificate and its effect as such are denied.

On the other hand it appears that Lewis defaulted, neither Russell nor any other assignee of Lewis ever made final payment, the lands were forfeited, offered for sale in July, 1824, were not sold, and being entered thereafter by Mecke, he assigned to Simmons, the plaintiff, to whom a patent issued in April, 1871.

The plaintiff offered in evidence the patent and exemplifications of records, papers and decisions from the General Land Office.

The defendant offered in evidence certified copies of deeds from Madison county, Illinois, the alleged final certificate, the deposition of Harry Wilton, and books and papers of the Kaskaskia land office, but no evidence from the General Land Office.

1. To show that Lewis conveyed, or assigned, his interest to Russell, defendant introduced certified copy of "deed and power of attorney." from Lewis to Russell. dated July 8, 1815, also deed from same to same dated September, 13, 1816. (Record pp. 14-16.)

These deeds were acknowledged before a Justice of the Peace in Madison county, Illinois, but were not accompanied by the required certificates of magistracy.

In instructions from the Treasury Department to registers, dated August 22, 1807, it is said, "as to the proper forms and proof of the execution of an assignment: it is the practice of all the other offices and at the treasury to accept such as describe the tract of land with precision, are tested by two witnesses and acknowledged before a Judge or Justice of the Peace by the party (or on oath by a witness) to which is subjoined the certificate of the clerk of the county in which the magistrate resides, stating, under his hand and seal of office, that the person before whom the acknowledgement was made was at the time of acknowledgment a magistrate." (*Public Lands, etc., 1838, vol. 2, p. 209.)

In the same volume, page 307, circular to the registers of the United States Land Offices, dated May 5, 1821, says: "It is indispensably necessary to the validity of an assignment that it be acknowledged either before a Justice of the Peace (in which case a certificate of magistracy, under seal of the court, will *always* be required) or before a Notary Public, whose official seal must be attached."

This circular refers to the above as being the practice under the old system of sales.

In the same volume, page 354, circular to Registers and Receivers, dated August 17, 1821, says: "The evidence of title in every instance is required to be certified by the clerk of a court under his official seal and to accompany the papers on which patents will be founded."

The rules of the land office were familiar to the officers, and Russell, he being a well-known land speculator of that day. If Davidson, before whom the acknowledgments were taken was a Justice, the clerk's certificate ought to have been and could have been attached to the acknowledgments before being presented to the register, or even at this late day a certificate that there was such an officer might have been produced at the trial, by defendant, from the proper official. It is a suspicious circumstance that such a

*The title of this work is Public Lands, Laws, Instructions and Opinions, published by Gales & Seaton, Washington, 1838, by authority of the Senate of the United States, and is authority. See Gregg *et al* v. Forsyth 24 Howard p. 180.

certificate has never been shown. The Government required the assignment to be evidenced in a certain way and this way rather than a different one which might be permitted by a State Law must be followed. *Wilcox v. Jackson*, 13 *Peters*, 497; *Parker v. Duff*, 47 *Cal.*, 554. These deeds not being properly certified to cannot be used to establish the fact of an assignment to Russell.

Circular from Treasury Department, dated December 6, 1802, to Registers, etc., says; "Whenever an assignment of any section or fraction is made by the person purchasing the same from the United States, the certificate or assignment of the party transfering is to be lodged with the register of the land office until all payments are fully made; after which it must be transmitted to the Register of the United States along with the final certificate as evidence upon which the Secretary's certificate and the patent may issue to the assignee." (Public Lands, etc., 1838, vol. 2, p. 231, also Record p. 26.)

In the same volume p. 257, Circular of Instructions to Registers, dated Treasury Department, July 5, 1805, says, in reference to granting final certificates in favor of the assignees of public lands, "the evidence of such assignment must remain deposited in your (*i. e.* Register's) office till a final certificate be granted and then be transmitted to this Department."

On page 269 circular, dated August 22, 1807, is to the same effect. On page 307, circular to the Registers of United States Land Office, dated May 5, 1821. says, "in every case where lands sold under the new system of cash sales are intended to be assigned previously to the issuing of a patent, the assignment should accompany the register's certificate of the purchase *as has heretofore* been the practice under the old system of sales." Circular dated August 17, 1821, on page 354 of same volume is to the same effect.

Under date of May 10, 1826, in a letter to the Register at Batesville, Arkansas, the Commissioner makes reference to the rule concerning the filing of assignments as follows: (From Public Lands, etc., vol. 2, p. 395.)

"The enclosed letter from Wm. Russell has been recently received at this office; you will perceive that it has reference to some suspended cases which were reported to you a short time ago and the causes of which suspension are not as yet removed by your explanation. The list of pre-emptions which were forwarded from the land office at Batesville have always been regarded at this office as a reference to prevent patents issuing for tracts awarded to pre-emption claimants, excepting to the claimants themselves, or to persons entitled by conveyance from them. All forfeited pre-emptions should have been duly reported to this office; otherwise it is impossible to distinguish those tracts on which entries cannot be made but by the person to whom the right of pre-emption was awarded, or his assignee. * * * * It will be necessary for you to certify to the facts detailed by Wm. Russell, in the cases to which his letter has reference, and to forward the assignments from the pre-emptioners to him in all cases where the pre-emption right is not forfeited," etc.

The acts of March 2, 1821, and April 20, 1822, provided relief "to purchasers and every *legal* holder of any certificate of the purchase of the public lands."

In July, 1822, Russell, assuming to be assignee of Lewis, that is, the legal holder of Lewis' certificate, files his acceptance and relinquishment, which refers to "original certificate herewith surrendered—No. 231, dated May 11, 1816."

To show himself to be the legal holder of Lewis' certificate, he was required to produce a properly certified assignment, and to file the same with the register. He did neither. He was not therefore the legal holder of Lewis' certificate, or any right belonging to him, and this relinquishment, No. 430, and any subsequent steps founded on it, are void.

But we deny there ever was such a certificate of entry of Lewis' preemption right, actually or legally, in Russell's possession. If so, why is not its date and number referred to in Lewis' deed to Russell of September 13, 1816, and why is it not, or its exemplification produced, if it was surrendered? The pretended final certificate refers to no entry by Lewis, nor to the date of any entry. Russell and the register do just enough to give an appearance of title. The unaided memorandum in relinquishment No. 430 of such a certificate, where there are so many evidences of irregularity and fraud, is not sufficient to prove its existence or title in Russell, and the defendant, having attempted by his evidence to prove the regularity of Russell's title, must do so completely, and though he may insist that it is to be presumed that the district land officers did their duty, he has not produced any competent evidence on which to found such a presumption. Besides the presumption is much greater in this case in favor of the findings of the General Land Office and its action in the premises.

Now, what did Russell do? By note at bottom of declaration No. 430, (record p. 27, abst. p. 4), it appears that Russell, in July, 1822. showed to the register a deed from Lewis to him for the land in controversy, and that Russell *retained* the deed. The defendant introduced two deeds from Lewis to Russell. (Record pp. 14 to 16, abst. pp. 3, 4.) The fair inference would be that this note referred to one of these deeds, (neither of which was sufficient, as above shown.)

The defendant produces no evidence of assignment other than above, and having attempted to prove an assignment, and failing, he cannot properly say that it is presumed that there was at some other time an assignment which was regular, particularly when the commissioner expressly declares (record pp. 18, 30, abst. pp. 4, 6,) that "in the case under consideration, no evidence of assignment was ever filed in the district office, and none was transmitted to" his office, with the exception of the memorandum above mentioned, and that was deemed insufficient evidence of assignment. The commissioner also states that the law and the rules and regulations of the General Land Office imperatively required the evidence of assignment to be filed with the registers of the district land offices, and transmitted by them to the General Land Office with the other papers.

The defendant has not shown a valid assignment. The provisions of the relief acts applied to the *legal* holders of certificates. Until Russell brought himself within the terms of the law, he was no holder at all. The testimony shows that the evidences of assignment, if there was one, were retained by Russell and not filed with the register, and the commissioner certifies that no such evidences were ever filed in the district office or in his office. Russell was not entitled to a final certificate, so far as the evidence produced shows, nor does the paper alleged to be a final certificate raise the presumption that he did at any time produce the proper evidences of assignment and file the same, because that paper is not proven to be a final certificate; but plaintiff proves that it is not—and

because its genuineness is not established. (See §§ 6 and 7.) And further, if the assignment was regular and duly filed, and the final certificate hereinafter referred to was genuine, why did not Russell or his grantees obtain a patent years since? He knew too well that he had no just claim and that the General Land Office would not grant him a patent. Men acquainted, as he and his grantees must have been, with land titles, and having in their possession a final certificate, would not let near fifty years pass without seeking that best evidence of title—a patent, founded on a valid entry. The lands originally belonged to the government. In disposing of them it has a right to impose such conditions as it sees proper. The Commissioner of the General Land Office exercises a general superintendence over the subordinate officers of his department, to prevent the consequences of irregularity and fraud. The duties of all these officers are prescribed by law or by regulations having the force of law. *Parker v. Duff*, 47 *Cal.*, 554. The instructions quoted were his official directions and are reasonable and lawful. It is the duty of purchasers or their assignees to comply with such conditions if they wish to become invested with the title. Russell, even if a bona fide assignee, disregarded the law. The defendant claiming under him is asking the court to aid him in acquiring a title in violation of law. Did Russell file his assignment with the register, and was it transmitted with the other papers to the General Land Office? The proofs show not; therefore the defendant has no title.

2. In consequence of this disregard of the law, after waiting nearly two years, for the parties to comply with its requirements the lands comprised in Lewis' claim were forfeited by the General Land Office, and offered again at public sale in 1824, becoming thereafter subject to private entry, and the part in controversy remained so, until purchased by Mecke, who assigned to plaintiff in 1871, and to whom a patent in due form issued. (Record pp. 9, 18, 23, 24, 30 and 8, Abst. pp. 1, 4, 5, 8.)

Russell having no title, nor right to one, by reason of his non-compliance with the law and regulations of the department, cannot, nor can his grantees, object to the title of the plaintiff that the preliminary steps are not shown to have been taken. The patent is *prima facie* evidence of these facts the court says, in *Aldrich v. Aldrich*, 37 *Ill.*, 32, "If the government officers cancel the entry, as was done in the case at bar, the courts in the absence of any other evidence, will presume in favor of the official action of the government officers that such cancellation was made upon just and valid grounds," and in *Minter et al. v. Crommedin*, 18 *Howard*, 87, the court says "the presumption is that the patent is valid and passed the legal title, and furthermore, it is *prima facie* evidence of itself that all the incipient steps had been regularly taken before the title was perfected by the patent. It has been so held by this court in many instances * * * the rule being that the patent is evidence that all previous steps had been regularly taken to justify making the patent, and one of the necessary previous steps here being an order from the Secretary to the Register to offer the land for sale, * * * we are bound to presume that the order was given. That such was the effect, as evidence of the patent produced by the plaintiffs was adjudged in the case of *Bagnell v. Broderick*, 13 *Peters*, 450, and is not open to controversy anywhere. The burden rests upon defendant to show the irregularity or want of the necessary steps upon which plaintiff's patent is founded."

The court in *United States v. Arredondo*, 6 *Peters*, 727, 728, lay down the principle that the acts of public officers in disposing of public lands by

color or claim of public authority are evidence thereof until the contrary appears by the showing of those who oppose the title set up under it, and deny the power by which it is professed to begranted.

8. There can be no outstanding title in Lewis or his heirs, because his rights were forfeited for non-payment of purchase money according to the terms of the original purchase, and it is not pretended that he claimed any further credit or made any final payment under any extension.

Russell never having acquired any right to the land from Lewis such as the laws required, Lewis' rights were forfeited under Acts of March 2, 1821 and April 20, 1822.

By the very terms of those acts the lands became forfeited, Lewis never having complied with the conditions of the laws. By the former the land became forfeited at once on October 1st, 1821, by force of law and no formal declaration to that effect was necessary; but by the latter Lewis had further opportunity to acquire title until September 30, 1822, but he never filed his acceptance of the provisions of the law, nor surrendered his certificate of purchase by that time nor any other time. Nor is it anywhere shown that Russell acted as attorney for Lewis.

The pencil memorandum on the books of the Kaskaskia Land Office, Ledger B, p. 87 (Record 9, Abstract p. 2,) shows that the land was reported forfeited on October 1st, 1821. The exemplifications from the records of the General Land Office and the decision of the Commissioner shows that the forfeiture was confirmed about two years afterwards and the lands again offered for sale in 1824. (Record pp. 18, 30, 23 and 24. Abstract pp. 4, 7, 5.)

Even if the pencil memorandum is of no force the formal Declaration by the General Land Department of the forfeiture proves, under the circumstances, that the land reverted to the Government and became subject to private entry and remained so until purchased by Mecke, who assigned to plaintiff. All that was done by Russell after the forfeiture could have no effect to set it aside. Admitting it to be true that he made a final payment (which, however, is denied) this could not restore the lands to their former position. No collusion between Russell and the Land Officers or mistake as to their duties and rights could deprive the Government of its title to lands which had been forfeited and made subject to private entry. See authorities under points II. and IV.

4. Neither Lewis nor Russell made final payment. (Record pp. 18, 23, 24, 30, 31. Abstract pp. 4, 5, 7). On Journal D, Register's Book, Kaskaskia Land Office, (Record p. 10, Abstract 2,) under date of July 2, 1829, page 291, Lewis' account is credited by price of certain lands relinquished by Wm. Russell per his relinquishment. No. 21, dated same day, on page 292, of same book, is a further credit by cash and discount, which, after the relinquishment above mentioned, is stated to be in full payment per receiver's certifiate. No. 5220, dated July 2, 1829, and his, the Register's "final certificate No. —, *of same date*, granted to Wm. Russell," for the land in controversy. Then comes an alleged letter, (Record p. 11, Abstract p. 2,) to show the transmittal of the relinquishment, the receiver's certificate No. 5220, &c., to the General Land Office, and another letter (Record p. 12, Abstract p. 3,) to show the receipt of the same. From this it is urged that Russell made final payment and the certificate in evidence is the final certificate above referred to without number. Why did not the defendant go further, and from the General Land Office, to which he

says he has traced all the papers, get exemplifications of Wm. Russell's relinquishment? No. 21, dated July 2, 1829, of receiver's certificate No. 5220, of same date, and also of the monthly abstract of the business at the Kaskaskia Land Office, covering this date, and showing these transactions, and of the duplicate final certificate? Why did he not also get certified copies of Lewis' assignment to Russell, as filed in the Department? The answer is that no such papers as Wm. Russell's relinquishment No. 21, receiver's certificate No. 5220 or other papers above referred to were ever received at the General Land Office, nor have they any record of the transactions therein referred to.

If any such transactions of a *bona fide* character had taken place, the records of the General Land Office would have shown something, at least, about them.

Such papers were never in existence nor has the final certificate referred to, (but the existence of which we deny) been produced.

From the Commissioner's letters (Record pp. 18 and 31, Abstract pp. 4, 7,) it appears that the records of his office contain no evidence of any payment whatsoever, whether by cash or by relinquished lands, upon the said tracts subsequent to the payment by Lewis on May 11, 1816; that the files of the office contain two regular series of relinquishments in the Kaskaskia district, one relating to the relief act of March 2, 1821, and the other to the act of May 18, 1824; that No. 21 of the first was executed August 14, 1821, by Jacob Bowerman, and No. 21 of the latter, by Peter Paulus, under date of November 30, 1824, and both describe different lands from those in controversy, and that no other relinquishment No. 21 than the two described was ever received, nor was any receipt No. 5220 received. On pages 28 and 29 of the Record are exemplifications of the two relinquishments, No. 21 above referred to. The paper produced and dated July 8, 1829, does not correspond with the entry of the Register where he says he has issued a final certificate dated July 2, nor is it a final certificate, as will more fully appear further on. It is charged that at that day there was a corrupt ring operating in lands at the Kaskaskia office, of which Russell and the then Register were a part. Here are evidences of this charge. Under these facts the Commissioner decided that neither Lewis nor Russell made final payment and on this point and that there was no assignment filed as required by the law and the rules of the Department, the decision of the Commissioner is final and conclusive in this case.

The decision of the proper officer acting within the scope of his authority that certain antecedent acts which were required had not been performed, cannot be attacked in this case. *Johnson* v. *Towsley* 13 *Wallace* 72; *Le Roy* v. *Clayton* 2 *Sawyer* 493; *Gray* v. *McClance* 14 *Illinois* 343.

5. The defendant bases his defense upon what he claims to have been a valid entry, followed by the issuing of a final certificate to Russell as assignee of Lewis. He must show that Lewis and Russell complied with the law and all legal requirements of the Land Department. Until all these prerequisites were performed Russell could acquire no vested interest in said lands and they did not become segregated from the public domain. *The Yosemite Valley case*, 15 *Wallace* 77. These conditions were never performed as has been shown (see sec. 1 and 4) and defendant received from Russell and his grantees no interest in said lands by which plaintiff's title in this action can be defeated.

The court in *Shepley et al., v. Cowan et al.*, 1 *Otto* 330, says, "that the power of regulation and disposition conferred upon Congress by the Constitution only ceased when all the preliminary acts prescribed by law for the acqusition of the title, including the payment of the price of the land, had been performed by the settler. When these prerequisites were complied with, the settler for the first time, acquired a vested interest in the premises, of which he could not subsequently be deprived." By act of Congress the General Land Office was vested with certain powers of regulation and its rules and regulations, so long as within the scope of the officer's authority, have the force of law, and until the regulations are complied with no title vests in the purchaser. It will not do for him to follow some other manner which in his judgment may be an equivalent method. *Wilson v. Mason*, 1 *Cranch*, 97; *Hildebrand v. Stewart*, 41 *Cal.*, 378.

6. The pretended final certificate dated July 8, 1879 (Abstract pp. 3, 7) is not a genuine final certificate in form or substance. It is unofficial and irregular.

In Public Lands, etc., 1838, Vol. 2; Instructions, page 257 Circular to Registers, dated July 5, 1805, says: "In issuing the final certificate the name of the original purchaser must be inserted throughout, the last blank excepted where the name of the assignee should immediately precede the words "shall be entitled, etc." In same volume, page 352, Circular to Registers, of August 17, 1821, section 8, it is said "in issuing * * * a final certificate * * * the name of the original purchaser is to be inserted." To the same effect is Circular of August 16, 1821, page 349. Again in same volume, page 440, in Circular of March 9, 1831, the Commissioner says, "The Register's final certificate containing a transcript of the accounts will exhibit, &c.," and on page 445, in Circular dated May 25, 1831, sections 8 and 9, he says:

"8. The Register's certificate of purchase and Receiver's receipt should designate the christian name of the purchaser in full, and where a middle name or names occur, the same should also be in full, and the name of the county and state in which the purchaser resides should be invariably stated.

9. The designation of the tract in the receipt and certificate, with the whole of its description, must be in writing, not in figures."

By examination of this certificate (record p. 12, abst. p. 3,) it will be seen that the name of Lewis or any original purchaser is not in it; it is entirely written, whereas the department furnished printed blanks; the words "shall be entitled, etc.," referred to in the instructions, are not in it. By the circular of March 9th, 1831, the commissioner gave further directions, which were in accordance with previous practice, by which it appears final certificates contained a transcript of the account of sale. This certificate contains no such account. Russell does not appear in it as assignee, neither is the residence of Russell given. The designation of the tract is in abbreviations, and figures and not written as required. The certificate bears no number on the face in it. The indorsements on the back are no part of it, and might have been put there by any one.

The journal entry dated July 2, 1829, (record p. 10, abst. p. 2), refers to a final certificate of blank number as bearing the "same date." Yet the certificate itself is dated July 8th, 1829, and reads, "I do certify that on the 2d instant," &c.

The commissioner decides (record p. 31, abst. p. 7,) that this paper, which was submitted to him, is informal, unofficial and irregular in all

respects, and totally dissimilar from the final certificates prescribed by the rules and regulations of his office, of which the Kaskaskia office possessed printed forms.

This then not being a final certificate, in form or substance, and the signature thereto not being proven to be genuine, (see next point), no title of any kind passed to Russell, and defendant has nothing on which to found his claim of title, and the patent must prevail.

7. The signature to the final certificate, (record p. 12, abst. p. 3), purports to be that of S. Bond, the then register. The only proof as to the genuineness of the signature is the deposition of Harry Wilton, (record p. 13. abst. p. 3), who states that he knew Shadrack Bond, from whom as Governor he received his commission as Sheriff. To the question "are you acquainted with his handwriting?" he answers, "I am, I suppose, acquainted with his handwriting, having seen it on my commission." To the request to "look at the signature on the certificate, exhibit A, (*i. e.*, the alleged final certificate), and see if you think the signature on said certificate is the signature of Shadrack Bond?" he answers, "according to the best of my knowledge it is the signature of Shadrack Bond." Both question and answer objected to. Then to question, "How does the signature to the certificate to exhibit A compare with the signature to your commission received from Governor Bond?" he answers, "from my *recollection* they are the same, except the signature to the commission is a little more shaky than this, but think it the same signature." Question and answer both objected to.

On cross-examination, he says, "I don't remember of ever seeing him write," and in answer to question "the only reason you have for believing that the signature on the certificate, exhibit A, is that of Governor Bond, is because it resembles the signature on your commission, is it not?" he says, "that is my reason."

The signature of the Registers of land offices cannot be known officially to the court (*Fail and Nabb v. Goodtitle, Breese* (*Ill.*) 156,) particularly in the case of papers not forming a part of the files of the office. Proof must be given of the hand writing of the Register. This cannot be done by comparison simply. The commission to Wilton is not properly in evidence and pertinent to the case. (*Brobston v. Cahill*, 64 *Ill.*, 356.) The plaintiff was not given an opportunity to see if indeed it was a commission at all. The genuineness of the signature to it is assumed and not proven in any way. It is well known that it is a custom for private clerks or other subordinate officials to sign the name of the Governor to such papers. All that appears is that Wilton had a commission to which appeared the signature "S- Bond." It is not shown that Wilton, or any one else, saw Bond sign it. Wilton says he never saw Bond write; don't appear to have had any correspondence about his commission, or anything else, with Bond; nor any personal knowledge of his hand writing; nor any intercourse which showed that Bond knew that Wilton was acting under the commission. The court in *Pate v. The People*, 3 *Gilman*, (*Ill.*) 660-1, says of the witness introduced to prove the hand writing: "He did not state he was acquainted with his hand writing, he had not seen him write * * * A witness ought first to be asked if he is acquainted with the handwriting of the party. If he answers in the affirmative, he is then to be asked how he obtained the knowledge. It is only when he professes to have this knowledge, acquired from *legitimate* sources, that he is permitted to express an

opinion." Wilton judged only by comparison. In *Kernin v. Hill*, 37 *Ill.*, 209, the court says, "it must be considered the law of this state, that the genuineness of a signature cannot be proved by comparing it with another signature admitted to be genuine." Much less can it be proved by comparison with a signature not admitted nor proved to be genuine. The proof is to not to be made by comparison, but by the production of witnesses who have acquired a knowledge of the general character of the handwriting of the party (*Pate v. The People*, 3 *Giman*, (*Ill.*) 644) nor is it enough that the witness may have seen the signature of the party to other instruments, unless they are shown to have been recognized by the party as having been signed by him. (*Putnam v. Wadley*, 40 *Ill.*, 346.) Wilton had no general knowledge of Bond's handwriting, nor had he seen his signature to other instruments admitted by Bond to have been signed by him, nor does he show that Bond signed his commission, or ever recognized the signature thereto to be his. Wilton had a commission, but it don't appear to have been personally examined for purpose of comparison in this case, even if that were permitted, but he refers to his *recollection* of the appearance of a single signature which for aught that we can tell, he had not seen for very many years, and which, when the certificate sought to be introduced in evidence was shown him, was not present. If the comparison of two signatures, both being present, is not admissable, much less is that of a signature and the recollection of one.

The signature of S. Bond, Register, not being proven, the paper should not have been received in evidence.

8. "No title can be held valid which has been acquired against law, and such is the character of the defendant's title." The law required the evidences of assignment to be certified in a certain way. This was not done. The evidences of assignment were to be filed with the Register and sent to the General Land Office. This was not done. It may be said that the assignment had performed its office when the final certificate issued (if any ever did) and that any proof concerning it is unnecessary; that it is to be presumed to have been properly filed with the Register. But this is not true; its office was also to enable the official issuing the patent to see that the latter was being properly issued, and that the legal title passed to the proper person, and so, if relied on in this case, it must be proven to have been made and filed according to law; and defendant having attempted to prove an assignment, and it being shown that his papers tending to show that fact were not filed as required by law, it will not do for him to say that the presumption is that at some other time and in some other way a sufficient assignment was properly filed. The testimony destroys any presumption arising from the records of the local land office, and the records of the General Land Office with the action of the officers in that Department not only raise a superior presumption in their favor, but are conclusive.

It is not reasonable to suppose, in a *bona fide* transaction reaching over a period of twelve years, and in which sundry reports and papers were required to be transmitted to the General Land Office, that this office should be utterly lacking in any evidence to show Russell's right to said land, and that on the other hand it should possess records and papers showing that the matter was a fraud, that being the true reason why no reports of the alleged transaction were made to the General Land Office.

Further, Russell and his partners figure quite largely in the courts of those days, (as appears from the reports) and in controversies about lands. (See letter from Commissioner to the Register in Arkansas, under date of May 10, 1826, taken from Public Lands, etc., vol. 2, page 395, concerning matters with which Russell was connected, similar in kind to this case, quoted on 15 page of this argument.)

If John Lewis had not signed the deeds; if Davidson, the justice, had not taken his acknowledgement, we can see why William Russell did not want to file evidences of assignment. If William Russell made no final payment, we can see why the land officers did not wish to report it. All concerned in these transactions were afraid of investigation. No duplicate final certificate on file at Washington; a paper of doubtful character in his hands, and with a knowledge of irregularities in the matter, Russell trusted to time to do what the law would not. If it was a fair transaction the Department would have been importuned for a patent long years ago.

The mere entry on the record of a local land office of certain things, which record is in itself imperfect and contradicted by the General Land Office, (record pp. 10, 18, 31, abst. pp. 2, 4, 6 to 8), and sought to be sustained by a paper said to be referred to in it, but which is different and not legal nor genuine, cannot be said to operate as an appropriation or segregation of the land in controversy from the public domain.

Russell could acquire no vested right till he had complied with the law. (See No. 5.) Till then the most any one could claim was an equitable right, and the land was subject to the control of the government for good cause, and being forfeited and offered for sale, for reasons authorized by law, all rights of Lewis and Russell, both legal and equitable, were extinguished. Even if the defendant claims an equitable right, he has no standing in this court, in which, as well as in the courts of the State of Illinois, the distinction between the law and equity side of the courts is maintained.

An equitable title is no defense to an action in ejectment. (*Aholtz v. Zellar*, 88 *Ill.*, 24), and other authorities cited on p. 13, herein.)

In *Gibson v. Chouteau*, 13 *Wallace*, *p.* 92, the court says: "In the federal courts, where the distinction between legal and equitable proceedings is strictly maintained, and remedies afforded by law and equity are separately pursued, the action of ejectment can only be sustained upon the possession by the plaintiff of the legal title. * * * In the action of ejectment in the federal courts, the legal title must prevail, and the patent, when regular on its face, is conclusive evidence of that title."

Respectfully Submitted,

A. L. KNAPP, Attorney,

with whom

CLINTON L. CONKLING is of

Counsel for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

NO. 1040.

JAMES H. SIMMONS, Plaintiff in Error.

vs.

AUGUST WAGNER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

WHEREAS, In the record of said cause certified from the Circuit Court of the United States for the Southern District of Illinois, certain omissions have been made, as hereinafter described, it is therefore stipulated and agreed by the parties to said cause that on the left hand side and across the face thereof—of page 87, Ledger B, Receiver's book, Kaskaskia Land Office—is the following memorandum written in pencil:

"Reported as forfeited
1st Oct., 1821.
Bal. due,
Prin. $792.90
Int. till now 237.60

$1,030.50."

This pencil writing is not in the same handwriting as the writing in ink, and is written over and across the entries made in ink.

This page, 87 Ledger B, is entitled Exhibit 2, and is found on page 18 of record, and page 9 of printed record. It is also agreed and stipulated that on the trial, upon the introduction of "deed and power of attorney" between John Lewis and William Russell, dated July 8, 1815, (on page 29 of record and page 14 of printed record) the plaintiff then and there objected to the introduction of the same, which objection was overruled, and to which ruling of the court the plaintiff then and there excepted.

It is also agreed and stipulated that on the trial, upon the introduction of the deed of Lewis and wife to Russell, dated September 13, 1816, (on page 33 of record and page 16 of printed record) the plaintiff then and there objected to the introduction of the same, which objection was overruled, and to which ruling of the court the plaintiff then and there excepted.

And it is agreed that the case shall stand as though the foregoing were a part of the record as sent up from the Circuit Court for the Southern District of Illinois.

It is also agreed between the parties that on account of sickness in family of counsel for plaintiff in error he was unable to furnish his brief so as to give counsel for defendant in error a copy of the same until Dec 31, 1879, that the counsel for appellee have until January 20, 1880, to file his brief and argument, that his time be extended to that date if the court can allow the same under the circumstances and its rules without prejudice to the parties.

A. L. KNAPP, Attorney for Plaintiff in Error.
CHAS. A. WISE, Attorney for Defendant in Error.

Supreme Court of the United States,

NO. 1040.

JAMES H. SIMMONS, Plaintiff in Error.

vs.

AUGUST WAGNER.

In Error to the Circuit Court of the United States, for the Southern District of Illinois.

STATEMENT OF THE CASE.

SUPREME COURT OF THE UNITED STATES,

NO. 1040.

JAMES H. SIMMONS, Plaintiff in Error.

vs.

AUGUST WAGNER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF ILLINOIS.

STATEMENT OF THE CASE.

This was an action in ejectment brought by James H. Simmons, plaintiff in error, against August Wagoner, de-
7* fendant in error in the said Circuit Court, judgment being rendered at the June Term, 1879, in favor of the defendant.

The land in controversy is the east fractional half of section nineteen, in township four north of range nine west, third principal meridian, in the County of Madison, State of Illinois, and is in the possession of the defendant in error.

Upon the trial of the cause the plaintiff, James H. Sim-
8 mons, introduced a patent in due form from the United States for said land, dated April 25, 1871; to the introduction of
9 this patent in evidence the defendant then and there objected for the reason that the said patent was issued without authority of law, the government having long before parted with all its interest in said real estate, but the court allowed the same to be read to which defendant then and there excepted.

The defendant then introduced in evidence the original land office books of the Kaskaskia district, State of Illinois, the same having been brought before the court by the proper custodian and from the proper office, by which it appeared from Journal A, page 235, of the Register of the land office

*References so made in this abstract, are to the pages of the *printed* record.

of Kaskaskia, that on April 17th, 1816, the land in controversy and other lands, making in all 528.60 acres, were entered by John Lewis, at the rate of $2 per acre—from Ledger B, page 87, of the Receiver of the Land Office; that on the same day Lewis was charged with the price of the 528.60 acres at $2 per acre, making - - - - $1,057 20

That on the same day he paid one-twentieth of the purchase money -	$ 52 86	
And on May 11, 1816, being within *forty days, he paid - - -	211 44	
That on July 2, 1829, he was credited		
By sale public land - - -	513 76	
By sundries same date - - -	279 14	
Making his credits equal to his debts and balancing the amount - -		$1,057 20

*(NOTE.—Further credit per Dec. No. 430, dated 19th July, 1822, balance $790 90, payable in 8 installments.)

Across the face of this entry upon the original record was written in pencil "Reported as forfeited 1st Oct. 1821:

Balance due - - - - - - - - -	$792 90
Interest till now - - - - - - - -	237 60
	$1,030 50"

10 The plaintiff at the time objected to the introduction of the record, which objection was overruled, to which ruling of the court the plaintiff then and there excepted.

It also appeared from Journal D of the Register's office at Kaskaskia, page 291, under date of July 2nd, 1829, that the credit of $513.76 was for fractional section 18, and northwest fractional quarter section 19, township 4, N. range 9, W., containing 256.88 acres, relinquished to the United States by William Russell, per his relinquishment No. 21, dated July 2d, 1829, being part of a tract purchased 17 April, 1816, at $2 per acre—and from page 292 of same record, and under date of July 2nd, 1829, it appears that the credit of $279.14 was for the following sums, which after the relinquishment of the fractional section 18, and northwest fractional quarter section 19, township 4, N. range 9, W., were received in full for the northeast and southeast fractional quarter section 19, and southwest fractional quarter section 20, same township and range, containing 271.72 acres, being the part not relinquished, purchased April 17, 1816, at $2 per acre, per Receiver's receipt No. 5220, dated July 2d, 1829, and final cer-

tificate No. of same date, granted to William Russell, of St. Louis, Mo.:

Cash - - - - - - - - -	$174 46
Discount on ac. at 37½ per ct. - - -	104 68

From Book D, Applicant's Entry Book, page 562, it appears that Wm. Russell, St. Louis, Mo., produced a receipt from the Receiver of public moneys. No. 5220, dated the 2d day of July, 1829, for the sum of $174.46, which with the discount therein stated and allowed of $104.68, was in full of the balance due or to become due, for the same lands last above mentioned, purchased April 17, 1816, at $2 per acre.

The defendant also introduced the letter book of Shadrack Bond, which book was found with other books in the possession of the proper custodian and in the proper office, con-
11 taining a letter written by Bond to the Department at Washington, in July, 1829, stating that therewith he transmitted his returns of land paid for under act of March 21, 1828, from 1st to 3d instant inclusive—his abstract of lands relinquished in the same time—the receipts issued by the Receiver, from No. 5211 to 5225 inclusive, cancelled, together with final certificates numbers 833 to 847, inclusive. Plaintiff at the time objected to the introduction of the record, which objection was overruled, to which ruling of the court the plaintiff then and there excepted.

This was followed by a letter from G. W. Graham, Com-
12 missioner of the General Land Office, and addressed to Edward Humphreys, dated General Land Office, September 12, 1829, acknowledging receipt of a letter of July 4th, 1829, and returns under credit system, from the first to the third of that month, and three cancelled certificates of stock issued at Kaskaskia, and stating that the last had been compared with the Register's abstract thereof and found to be correct. To the introduction of this letter the plaintiff then and there objected, which objection was overruled, and to which ruling of the court the plaintiff then and there excepted. The defendant then introduced the final certificate, and which is as follows:

"LAND OFFICE, AT KASKASKIA, July 8th, 1829.

"I do certify that on the 2d instant Wm. Russell filed in this office a receipt, No. 5220, for $174.46 in cash, which is full payment for the N. E. fr. ¼ sec. 19, S. E. fr. ¼ 19, and S. W. fr. ¼ 20, in T. 4, N. of R. 9, West.

"S. BOND, Regr."

Which paper was endorsed as follows:

"Receipt for lands on Big Island, final payment. No. 2, Book 20, No. 1949, p. 48."

This certificate was not on any printed form but was en-
13 tirely written and was accompanied by the deposition of Harry Wilton, who stated that he was 84 years of age; was acquainted with Shadrack Bond from 1814 to his death; knew him well at Kaskaskia and Vandalia; was intimate with him, and from him, as Governor of Illinois, received a commission as sheriff of Washington county, Illinois; knew that he was Register of Land Office at Kaskaskia, Illinois; have been many times in his office; received his commission as sheriff of Washington county in 1819; thinks he has seen letters from Shadrack Bond to Benjamin Bond, but is not positive; supposes he is acquainted with Bond's handwriting because he has seen it on his commission; according to the best of his knowledge considers the signature on the certificate above referred to, to be the signature of Shadrack Bond; from his recollection thinks signature on above and on his commission are the same. On cross-examination he said I do not remember of ever having seen him write, and only believe the signature on the certificate to be that of Governor
14 Bond because it resembles the signature on my commission.

To the introduction of this certificate and the deposition the plaintiff at the time objected, which objection was overruled, and the plaintiff then and there excepted.

The defendant also introduced a certified copy of "deed and power of attorney" from John Lewis to William Russell, dated July 8, 1815, conveying the pre-emption right of said Lewis to fractional section 18, the north fractional half and southeast fractional quarter of section 19 and southwest fractional quarter section 20, all in township 4 north, range 9 west, in Madison county, Territory of Illinois, and empower-
15 ing said Russell "to enter said land and pre-emption and do every other matter and thing that he may deem proper or necessary towards completing the title for the same that he the said Lewis could do, if he were personally present for the sole and only use of Russell." Lewis agreeing as soon as the land was entered by Russell in his name and the first installment paid to make Russell any further conveyance so as to completely transfer the title to Russell, which instrument was acknowledged in due form according to the laws of Illinois before T. J. Davidson, J. P., on 16 January, 1816, and recorded in Recorder's office of Madison county, Illi-

nois, on January 23, 1876. To the introduction of this deed the plaintiff then and there objected, which objection was overruled, and the plaintiff then and there excepted.

16 Also deed from John Lewis and wife to William Russell, dated September 13, 1816, for the same lands as in last deed: consideration, $55 00 cash, $264.30 paid on April 17, 1816, by Russell, for Lewis, to receiver of public moneys at Kaskaskia, on the pre-emption right of Lewis to said lands, and for the further sum of $792.90 remaining installments hereafter to be paid to the United States or receiver of public moneys by Russell, said conveyance was acknowledged before a justice of the peace in due form and recorded on September 16, 1816. To the introduction of this deed the plaintiff at the time objected, which objection was overruled, and the plaintiff then and there excepted.

17 It is admitted that defendant and his grantors from Russell have a regular chain of title all property made and recorded, have paid all taxes and have been in undisturbed and indisputed possession until the plaintiff claimed the same.

This was all the evidence produced by defendant.

The plaintiff thereupon introduced a letter from Willis Drummond, Commissioner of the General Land Office, to plaintiff, dated December 12, 1871, stating that the east one-half of section 19, township 4 north, range 9 west, third principal meridian, Illinois, with other tracts, was entered at Kaskaskia, April 17, 1816, by John Lewis under the old credit system, at $2 per acre. He paid $52.86, per receipt No. 656 then; on May 11, 1816, he paid $211.44, per No.
18 690, making in all $264.30, or one-half of the purchase money. He made no further payment, as appears from the records, and the lands were subject to forfeiture under act of May 10, 1800, but records do not show a formal forfeiture at that time. On July 10, 1822, William Russell at Kaskaskia office, claiming to be assignee of Lewis, made declaration, No. 430, and received certificate of further credit.

The laws, rules and regulations of this office imperatively required that in such cases the evidence of assignment should be filed with the registers of the district land offices and transmitted by them to this office. Without such evidence of assignment the Commissioner of the General Land Office was required by law to ignore the assignee, and to issue a patent to the original purchaser even though the said assignee should have made the final payment in the case.

In this case no evidence of assignment was ever filed in the district office, and none was transmitted to this office, with the exception of a memorandum at the bottom of said declaration No. 430, as follows: "Deed from John Lewis and wife to William Russell for the above tract, acknowledged and recorded in Madison county, has been shown to me by William Russell, who retains it." This memorandum is not in the hand writing of the Register, and is not made over, but under his signature. It was, therefore, deemed insufficient evidence of assignment by this office, and after waiting, as it now appears, nearly two years, that this defect might be remedied, the lands comprised in John Lewis' entry were forfeited, and offered at public sale in July, 1824, becoming thereafter subject to private entry; portions of the land were subsequently purchased at private entry by Jacob and Samuel Hawkins, George Job and others; and this said tract remained vacant public land until January 25, 1871, when it was entered in due form of law by Charles W. Mecke, and on April 25, 1871, patent issued to Simmons as assignee of Mecke.

The records and files of this office contain no evidence of an alleged final payment by relinquishment of certain lands (per relinquishment No. 21,) together with cash and forfeited land stock by said Russell in July, 1829. No payment of cash and no surrender of forfeited land stock by said Russell have ever been reported to this office. Further than this, relinquishments No. 21, of the two series, issued by the district office at Kaskaskia, one under the relief act of March 2d, 1821, and the other under the act of May 18, 1824, are both on file in this office, and are found to have been made, the first dated August 14, 1821, by Jacob Bowerman, and the other dated November 30, 1824, by Peter Paulens, and both describe totally different lands from those under consideration.

This letter also states that there is evidence on file in this office showing that at the period these lands were first entered there existed at the Kaskaskia district a corrupt combination of individuals, of whom William Russell, and the then Register at Kaskaskia, were a part, who by illegal practices possessed themselves of valuable lands; that any irregularities in
9 the history of these lands are without doubt attributable to a collusion between the said Russell and the Register, by which some false color of title may have been passed to Russell outside of the official records. To support this wholesale charge and give the evidence to prove it, the Commissioner gives a copy of a confidential letter written October 9, 1816, by B.

Stephenson to Josiah Meigs, from the files of the General Land Office, which wholly fails to sustain the Commissioner. The writer complains:

1st. That Col. Easton and Wm. Russell were implicated in getting up a petition against Meigs as Surveyor General of Illinois.

2d. That Easton was engaged in land speculations.

3d. That one Gillreath, as Sheriff, sold land at a tax sale he should not have done.

4th. That Easton by purchasing at said tax sales got possession of large tracts of government land by paying for it $2 per acre entered it, when if sold at public sale it would have brought more.

5th. That the entries so made were according to rule approved by Meigs, but which Stephenson thinks Meigs did not see the effect as it favored speculation.

6th. That there was a dispute between Wm. Russ[illegible] some one else, and the decision was in favor of Russ[illegible] he got final certificate.

Exemplification, dated January 9th, 1872, from the records and files of the General Land Office is a copy of the official record of the entry made by Lewis as stated in detail in Commissioner Drummond's letter of December 12, 1871. (See page 4 herein), and of the sales made after the lands were forfeited and offered for sale in July, 1824, and of the sale of the tract in question to Mecke, who assigned to plaintiff.

Also of letter from Treasury Department, Register's Office, 6th December, 1802, from Joseph Nourse, Register, communicating the decision of the Secretary of the Treasury, that whenever an assignment of any section or fraction is made by the person purchasing the same from the United States, the certificate or assignment is to be lodged with the Register of the Land Office until all payments are made, after which it must be transmitted to the Register of the Treasury of the United States along with the final certificate, as an evidence upon which the Secretary's certificate and the patent may issue to the assignee.

Also letter of October 15, 1829, from George Graham, Commissioner, to the Register and Receiver of the Land Office at St. Helena, La., which says, referring to the public lands, "a transfer made by the original purchaser on the back of the certificate and witnessed by the Register, is deemed

sufficient to entitle the assignee to a patent. But in all other cases of alienation whatsoever, the party claiming the patent must deposit with you the evidence of title, which evidence if deemed sufficient by you, will be returned to this office with the patent certificate."

27 Also of Declaration No. 430, referred to in Commissioner Drummond's letter of December 12, 1871 (see p. 4 herein), wherein Russell, in July, 1822, under Act, April 20, 1822, claimed to be Lewis' assignee, and got further credit on the lands entered by Lewis, and which declaration had below it and beneath the Register's name the following, viz: "In presence of Michael Jones, Register. Deed from John Lewis and wife to William Russell for the above tracts, acknowledged and recorded in Madison county, has been shown to me by William Russell, who retains it."

28 Also the relinquishments, numbered 21, each referred to in Commissioner Drummond's letter of December 12, 1871, and showing the facts as stated therein by him.

29 Exemplification dated March 20, 1875, is a copy of a private letter of Willis Drummond, Commissioner of General Land Office, as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Jan'y 18th, 1872.

Hon. JOHN B. HAY,
House of Rep's:

SIR: I have received, by personal reference from you, a letter dated 10th inst., from J. T. Cooper, Alton, Ills. This office is also in receipt of a letter, dated 14th ult., from Mr. Cooper direct, and enclosing alleged copies of entries, &c., from the district office at Springfield, Ills.

In reply thereto I have the honor to state that, on examination of the records and files of this office, it appears that the E. ½ of section 19, and the S. W. fr'l ¼ of section 20, T. 4 N., R. 9 W., 3rd P. M., former Edwardsville distr ct, Ills., were entered in conjunction with other tracts, at the then Kaskaskia district office, April 17th, 1816, under the old "credit system," by John Lewis, at $2 per acre. On the same date Mr. Lewis made a payment of $52.86, per receipt No. 656, being the required one-twentieth part of the full amount of the purchase money; and on May 11th, 1816, a further payment of $211.44 was made, per receipt No. 690, making in all $264.30, or one-fourth the full amount of the purchase money.

No further payment appears to have been made, and no further action taken in the premises by John Lewis, and the lands became properly subject to forfeiture under the act of May 10, 1800, and should have been so declared in the year 1819.

On the 19th of July, 1822, William Russell appeared at the Kaskaskia land office, claiming to be the assignee of the said John Lewis, and as such made declaration No. 430, (now on file in this office), receiving thereon a certificate of further credit. Both the law and regulations prescribed by this office imperatively required that in such cases the evidence of assignment, should be filed with the register of the district land office and by him be transmitted to this office, with the other papers without such evidence of assignment, the Commissioner of the General Land Office was constrained by the law to ignore the alleged assignee, and issue patent directly to the original purchaser, even though the said assignee should have made the final payments in the case.

In the case under consideration no evidence of assignment was filed in the district office, and none was ever transmitted to this office, with the exception of a memorandum at the bottom of the said declaration No. 430, as follows:

"Deed from John Lewis and wife to William Russell for the above tract, acknowledged and recorded in Madison County, has been shown to me by William Russell, who retains it."

This memorandum is not in the handwriting of the Register, who filled up the form, and is not made over but under his signature. It was therefore properly deemed insufficient evidence of assignment by this office, and after waiting, as it appears, nearly two years, that this defect might be remedied, the lands comprised in John Lewis' entry were forfeited, and offered at public sale in July, 1824, becoming thereafter subject again to private entry. Portions of the said lands were subsequently purchased at private entry, by Jacob and Samuel Hawkins, George Job, Moses Job and others, but the E. ½ section 19, and S. W. fr'l. ¼ section 20, T. 4 N., R. 9. W., 3d p. m., remained vacant public land until entered, the first named tract January 25, 1871, by Charles W. Mecke, and the latter on May 3d, 1870, by John W. Bunn.

Relative to the copies of entries and papers submitted by Mr. Cooper in his letter of the 14th ult., I have to state that the records and files of this office contain no evidence of any payment whatsoever, whether in cash or by relinquished lands upon the said tracts, subsequent to the said payment by John Lewis on the

11th of May, 1816. The monthly abstract of the business of the Kaskaskia land office for the month of July, 1829, (on file in this office), contains no reference to any such transaction, as is alleged by the said copies to have occurred in that month and year, and it is very evident that no return of the alleged payment was ever made to the government. In these said copies of entries it is stated that a portion of the final payment on the tracts in contest was made in the form of a relinquishment of certain of the lands embraced in Lewis' original entry, per "relinquishment No. 21." The files of this office contain two regular series of relinquishments in the Kaskaskia district, one relating to the relief act of March 2d, 1821, and the other to the act of May 18th, 1824. On examining these two series, it is found that No. 21, of the first, was executed August 14th, 1821, by Jacob Bowerman, and No. 21, of the latter, by Peter Paulus, under date of Nov. 30, 1824, and both describe different lands from those in controversy.

No other relinquishment No. 21, than the two described, was ever received by this office, nor has any receipt No. 5220 (referred to in these copies) been received.

Mr. Cooper has also submitted, per his letter of 14th ult., a copy of a letter, with enclosure, from Thomas Allen, of St. Louis, dated Nov. 20th, 1871. The enclosure purports to be a copy of a final certificate of payment on these lands, issued to William Russell, July 8th, 1829, by S. Bond, register of the Kaskaskia office. It is to be remarked that the journal entry (per copy submitted by Mr. Cooper) of payment is dated July 2d, 1829, and refers to a final certificate of blank number, as bearing the "same date." Yet the certificate itself is dated July 8, 1829, and reads: "I do certify that on the 2d inst.," &c. Further than this, the said certificate is informal, unofficial and irregular in all respects, and totally dissimilar from the final certificates prescribed by the rules and regulations of this office, of which the Kaskaskia office possessed printed forms.

It is shown by evidence on file in this office that at the period referred to, there existed in the Kaskaskia and Edwardsville land districts a combination of individuals (some of whom were counterfeiters and others) who by corrupt and illegal practices, and through collusion with the land officers of that day, possessed themselves of large bodies of the most valuable lands in those districts, whereby the government and bona fide settlers were extensively defrauded.

William Russell is shown to have been a leading and active participant in these frauds.

These facts, considered in conjunction with the irregularities, discrepancies and contradictions, which mark William Russell's connection with these lands, lead me to the conclusion that he, the said Russell, never had any bona fide claim thereto.

It is probable that John Lewis either died or abandoned the said lands and Russell, by the corrupt influence which he is shown to have exercised, secured from the land officers with whom he was in league, an outside, extra-official show of title, for which the government received no consideration.

The entries of Mr. Mecke and Mr. Bunn appear by the records of this office to be regular in all respects, and the title having passed from the U. S., I must decline to take any further action in the premises.

Mr. Cooper's letter is herewith returned,

Very Respectfully,

WILLIS DRUMMOND,

Commissioner.

The defendant at the time when each of the foregoing papers were offered in evidence, objected to the same on the ground that each of said papers were illegal, improper and irrelevant, and could not possibly have any bearing in the case at bar. But the court at each time overruled the objection and permitted the same to go in evidence; to which ruling of the court at each time the said defendant then and there excepted.

The foregoing was all the evidence:

The court found for the defendant on the ground that the premises in controversy, on the issuance of the final certificate to William Russell, ceased to be a part of the public domain and were not thereafter subject to entry by individuals or of sale by the United States, and to which finding the plaintiff then and there excepted, and upon which finding the court rendered judgment; to which ruling the plaintiff then and there excepted. The court found the value of the land in dispute to be more than five thousand dollars.

The bill of exceptions was then signed and sealed by the judge.

POINTS AND AUTHORITIES SUBMITTED ON BEHALF OF DEFENDANT IN ERROR.

I.

The purchase money for the land was paid to the government, the land thus became segregated from the public domain and was no longer subject to private entry. The issuing of a patent to plaintiff after this time was illegal and void and conveyed no title to the land.

Armstrong vs. Hammond, 3 McLean 107.

Carroll vs. Safford, 3 How. 460.

Stark vs. Starr et al., 6 Wall. 402.

Frisbie vs. Whitney, 9 Wall. 187.

Yosemite Valley Case, 15 Wall. 77.

Railway Co. vs. McShane, 22 Wall. 444.

Shepley vs. Cowan et al., 92 U. S. 338.

Wirth vs. Bronson, 98 U. S. 118.

Stoddard vs. Chambers, 2 How. 284.

II.

The land having been segregated from the public domain, the laws regulating the same are the laws of the State of Illinois, and by the laws of Illinois, twenty years adverse possession claiming title or possession under color of title and payment of taxes for seven years by defendant or his grantors is a bar to any recovery against him.

Wilcox vs. Jackson, 13 Peters, p. 517.

R. S. Ills. ed. 1874, p. 674, § 4.

Hardin vs. Gouveneur, 69 Ills. 140.

Meacham vs. Winstanly, 77 Ill. 269.

Kelly vs. Donlin, 70 Ills. 378.

Jackson vs. Wilcox, 1 Scam. 344.

Dolton vs. Cain, 14 Wall. 472.

ARGUMENT.

I.

The purchase money for the land was paid to the government, the land thus became segregated from the public domain and was no longer subject to private entry. The issuing of a patent to plaintiff after this time was illegal and void and conveyed no title to the land.

This point is susceptible of two divisions:

First—Is it a fact that the land had been paid for to the government?

Second—If so, what is the law? Does it make plaintiff's patent issued after that time void?

I will argue them in their order. *First*, is it a fact that the land had been paid for to the government?

In order to prove this fact the defendant in error on the trial in the Circuit Court, introduced: *First*. The original books of the Kaskaskia District, State of Illinois, by which it appeared from journal A, page 235, of Register of the Land Office of Kaskaskia, that on the 17th of April, A. D. 1816, the land in controversy and some other lands, making in all 528.60 acres, were entered by John Lewis at the rate of two dollars per acre.

This was the price at that time of Government land.

See Brightly's Laws U. S., p. 495, § 214.

Under the then law, only one-twentieth of the purchase money had to be paid in cash, but within forty days from the day of sale one-fourth of the purchase money had to be paid, and the balance was to be paid by the purchaser as follows, viz: One-fourth in two years, one-fourth in three years, and the balance or one-fourth in four years from the date of the purchase.

See Brightly's Digest Laws U. S., pages 495-6-7, §§ 214 to 220 inclusive.

In order to show a compliance by Lewis with the requirements of this law, the defendant next introduced in evidence ledger B, page 87, of the Receiver of the Land Office, that on the day Lewis was charged with the price of 528.60 acres he purchased at $2 per, making $1,057.20, that he on that day paid one-twentieth of the purchase money, $52.86, and on May 11, 1816, being within forty days, he paid $211.44, making the one-fourth of the purchase money required by law.

These entries thus shown on the original books clearly and unquestionably establish the fact, the lands in controversy, with other lands, were entered by Lewis. It is true the plaintiff objected generally to the introduction of these and the other books in evidence, but the court overruled the objection and permitted the same to be read in evidence. Certainly these original books being brought before the court by the proper custodian and from the proper office, were undoubtedly legitimate evidence, for two reasons, *first*, they were official registers, books kept by persons in public office in which they are required by the nature of their office to write down particular transactions, occurring in the course of their public duties, and under their personal observation.

Greenleaf on Ev., §§ 483-4-5, and numerous authorities there referred to.

Second. The entries in the books being more than 30 years old, and coming from the proper custody, prove themselves, being ancient writings.

Green. on Ev., §§ 21 and 570.

Phil. on Ev., 2 vol., p. 475 and note 430.

This objection has not been urged by counsel for plaintiff in error before this court in his brief or argument, by which I conclude he has abandoned his objection, thinking it untenable. These entries in the original books are corroborated by the exemplifications made from the records at Washington, introduced by the plaintiff in error, vide page of record 30, of Abstract 8, which also show that Lewis entered the land and paid part of the purchase money; in fact this point is so clearly established that counsel for plaintiff in error practically admits the same, but contends that Lewis never completed the purchase, never paid the balance of the purchase money as required by law.

The power of attorney and agreement from Lewis to Russell, dated the eighth day of July, 1815, shows that Lewis claimed to have a pre-emption right or claim upon the lands in controversy and other lands, and on that day in consideration of fifty dollars cash, sold and conveyed this claim to Russell, that the land was to be entered in Lewis' name and the first installment paid by Russell and upon the payment of the same Lewis and his wife were to make to Russell any such further conveyances as to completely transfer all the right and title of said Lewis and wife to Russell who was thereby fully empowered and authorized to enter the said land and pre-emption and do every other matter or thing he might deem proper or necessary towards completing the title that Lewis could do, and which, when done, was to be for the sole use and benefit of Russell, which power of attorney was acknowledged on

16 January, A. D. 1816, before T. G. Davidson, J. P., and recorded in the Recorder's office of Madison County, Illinois, on the 23d January, 1816, vide pages of record 14 and 15, abstract 4 and 5.

The evidence shows that the land was actually entered April 16, 1816—and on the 13th September, 1817, John Lewis and Patience, his wife, by a special warranty deed conveyed the same land to William Russell the deed reciting that Russell had paid the first installment of $264 30 to the receiver of public moneys at Kaskaskia and agreed to pay the balance due on the land.

Which deed was duly acknowledged before T. G. Davidson, Justice of the Peace, on the 14th day of September, 1816, and duly recorded on the 16th day of September, 1816.

Thus we have, *first*, a power of attorney authorizing Russell to enter the land for Lewis, and do every act necessary to perfect the title. *Second*, we have the fact that the land was entered in Lewis' name. *Third*, that after the entry in his name, Lewis, by deed, conveyed all his interest in the land to Russell.

These instruments were duly and properly acknowledged according to the laws of the State of Illinois and were recorded in the Recorder's office of the county in which the lands are situated. The acts of the parties were spread upon the public records, thus giving public notice of the same and submitting it to the public gaze, and thus evincing a fair, open and honorable transaction.

Was this deed an assignment of Lewis' claim to Russell?

What is an assignment? It is defined by Bouvier to be "a transfer or making over to another of the whole of any property, real or personal, in possession or in action, or of any estate or right therein."

The words, "give, grant, bargain and sell," or any other words which show the intent of the parties to make a complete transfer will work an assignment.

Watkin's Conv. Preston ed. b. 2, cix.

Unquestionably Lewis, after the land had been pre-empted by him and entered in his name, had a right in or to the land, an assignable intent.

If he had owned the title in fee at the time he made his deed to Russell, the deed would have conveyed to Russell the land in fee, certainly it would be a strange doctrine if this same deed, executed and acknowledged with all the formalities of the law neces-

sary to pass the title to real estate in fee, did not pass to Russell Lewis' claim in the land, if it was not a valid assignment of all Lewis' interest in the land. Upon principle this must be so, the lesser is always included in the greater.

I, therefore, contend that this deed was a valid assignment to Russell of Lewis' rights in the land. But this is not all the evidence on this point.

The note at the bottom of Book B., page 87 of the Receiver of the land office is as follows: "Further credits per Dec. No. 430, dated 19 July, 1822, balance $790.90, payable in 8 installments."

On page 27 of Record, abstract 8, this declaration is set forth in full. It appears that William Russell on 19 of July, 1822, according to the provisions of an act of Congress passed on the second of March, 1821, for the relief of purchasers of public lands prior to the 1st of July, 1820, requested further credit for the purchase money due on this land, that he did so as assignee of John Lewis. It also appears that at this time Russell exhibited his deed from Lewis and wife to him, but did not exhibit the certificate assigned to him, and that is why the Register made that memorandum at the bottom of the declaration or application. From this it might be argued either that Russell did not have such certificate, for if he had, he would have produced it, or having it, thought the deed would do equally as well, but if the instructions from the land department were as contended by counsel for plaintiff in error, certainly Mr. Russell would afterwards be informed of that fact, and if he did not have the certificate assigned to him, would procure it—and that it was done, can hardly admit of a doubt.

We have previously seen that Ledger B, p. 87 of the Receiver of the Land Office, record p 9, abstract p 2, showed as follows:

That on April 17, 1816, Lewis was charged with the price of 528.60 acres he purchased at $2 per acre, making - -		$1,057 20
That he paid one-twentieth of the purchase money - - - - - - -	$ 52 86	
On May 11, 1816, he paid - - - -	211 44	
The ledger next shows as follows: On July 2, 1829, Lewis credited by sale of public land - - - - - - -	513 76	
By sundries. same date - - -	279 14	—$1,057 20

This, then, shows that on this day, on the books of the government's legal and proper officers, John Lewis then owed the government nothing; that his account was square; that he had paid in full.

In order to show the correctness of the entries, and to explain the same, the defendant next introduced Journal D, of the Register's office at Kaskaskia, pages 291 and 292, record p. 10, abstract page 2.

On page 291 it shows that the credit of $513.76 was made up as follows: That William Russell relinquished fractional sections 18 and northwest fractional quarter section 19, township 4, range 9 west, containing 256.88 acres, as per his relinquishment No. 21 dated this day, and being part of the land originally purchased April 17, 1816, which at $2.00 per acre would be $513.76.

On page 292 it shows that William Russell on July 2, 1829, relinquished the above mentioned land, and that the amount paid, the original one-fourth, was received in full of the amount retained by him, viz.; Northeast and southeast fractional quarter section 19 and southwest fractional quarter section 20—the land in controversy—and the land thus retained contained 271.72 acres; that Russell then paid in cash and discount, as provided by law, $279.14, thus corresponding with the ledger, and showing conclusively that Russell, for Lewis, retained only 271.72 acres, which, at $2 per acre, would be $543.44. That it was paid as follows:

April 17, 1816,	$ 52.86	
May, 1816,	211.44	
July 2, 1829,	279.14	—$543.44

This clearly and conclusively shows the payment of all the land retained.

But it may be asked how or by what authority had the Register the right to give up part of the land and retain the balance, and apply the amount so paid on all the land on the land retained?

On March 2, 1821, an Act of Congress was passed for the relief of purchasers, which provides that in all cases when land had been purchased prior to July 1st, 1820, it shall be lawful for the purchaser or the legal holder of the certificate on or before September 30, 1821, to file with the Register of the Land Office, when any tract of land has been purchased, a relinquishment in writing of any section or part of section of land so purchased, upon which the whole purchase money has not been paid, and all sums paid on account of the part relinquished shall be applied to the discharge of any installment which may be and shall hereafter become due and payable upon such land so purchased, and shall not have been relinquished, and shall be so applied and credited complete on part retained.

Brightly Digest, p. 484 § 151.

The time of making the payments was extended by Acts of April 22, 1822, [see 3 vol. Stat. at Large, p. 666,] and by Act of March 3d, 1823, [see same vol. Stat. p. 781,] and by Act May, 1824, [see 4 vol. Stat. at Large, p. 24, and by Act of May 4th, 1826, [same vol. Stat. p. 158,] and by Act of March 21, 1828, [same vol. Stat. p. 259.] By this last Act the time was extended to July 4th, 1829.

Thus, under the Act of March 21, 1828, Lewis, or Russell for him, had the right to relinquish part of the land and pay for the balance retained, if done before July 4, 1829.

The proof conclusively shows that it was done on the 2d of July, 1829, in time under the Act, thus complying with the provisions of the law and making the act as done proper and legal, and the effect of which was, the Government received the money due it, got every cent, and Lewis or Russell became the real owner of the land, the Government only holding it in trust.

It may be asked why, or by what right, was the reduction of 37½ per cent. given? The law provided for it. Such was the provision of the Act of Congress passed May 18, 1824. See sec. 2 of the Act 4, Stat. at Large, p. 24. This provision was continued in force by the Acts of 1826 and 1828 above referred to, under the latter of which the parties acted.

The defendant next introduced Book D, being application entry book record p. 10, abstract p. 3, which further explains the whole transaction, and shows that Russell did make the necessary application as required by law, and in the application stated what he reclaimed and what he relinquished, thus agreeing with the journal and the ledger. Thus we have the three books, the application book, journal and ledger, all agreeing all the same. Is not this a strong, I may say a conclusive, circumstance that all the books made at the time, made when the transaction was fresh and vivid in the minds of the parties, all agree in every respect, and that they have stood thus over fifty years.

Under the Act of March 2, 1821, the purchaser or legal holder of the certificate could either relinquish part of the land, or obtain longer time on the balance due of the original purchase money, the Government remitting all interest then due.

It seems Russell: *First*, concluded to keep all the law and obtain an extension of time, but afterwards concluded to relinquish part of the land.

He made the first application on 19 July, 1822, he made the second in July 2, 1829, nearly seven years afterwards.

Now it does not appear that he acted upon his first application, that he made any payments under it, why, we do not know, but if the ruling of the department was as counsel for plaintiff in error contends it was, was it not for the reason that not having shown or exhibited the certificate of entry duly assigned to him by Lewis, his application was rejected? and that he procured the same and had it when he made the second application and final payment in 1829. There is no memorandum then made that a deed was presented from Lewis to Russell, but the entry is regular, just the same as those made in other such cases.

What is the presumption from these facts? Is it not that Russell had the certificate duly assigned to him? Is it not that the officers did their duty and they would not have received his application for relinquishment nor the balance of the money if he did have it.

This court in Cofield vs. McClelland, 16 Wall., p. 335, use this language: "The case comes within the rule so well settled by this court that the legal presumption is, that the Surveyor, Register, Governor, Secretary of State, have done their duty in regard to the several acts to be done by them in granting lands." "See Cowen & Hill's notes to Philips on Evidence note, 174 Presumptions."

In case of the United States vs. Arredonds, 6 Peters 727, this court say: "If it was not a legal presumption, that public and responsible officers claiming and exercising the right of dispersing of public domain, did it by the order and consent of the government in whose name the acts were done, the confusion and uncertainty of titles and possessions would be infinite."

Thus we have: *First*, a legal assignment of Lewis' claim by his deed to Russell.

Second, we have the fact that Russell relinquished in his name claiming as assignee, that his relinquishment and the final payments were accepted by the government officers, and the presumption is that they acted correctly, and consequently, it inevitably follows that Russell then complied with all the requirements of the law, then had Lewis' certificate and that it was properly assigned to him.

When Russell made his relinquishment and final payment he received a receipt to that effect, being No. 5220, as is shown by Book D, p. 562, also by Journal D, p. 291, and by the latter book that he gave up the same to the Register, who gave him a final r?ceipt. In the same month, July, 1829, S. Bond, the Register, wrote the department at Washington as follows:

"LAND OFFICE AT KASKASKIA, July, 1829.

"Hencewith I trancemit with my returns of land paid for under the Act of 21st March, 1828, from the 1st to the 3d instant, inclusive; my abstract of lands relinquished in the same time, the receipts issued by the Receiver from No. 5211 to 5225, inclusive, cancelled, together with final certificates numbers 833 to 847, inclusive." * * * *

This shows that a full report of this transaction was sent to the government; as this transaction was finished, completed on the 2d of July, it must have been included in the report, as the report includes all the transactions of the third of July, being evidently a report including all those who had taken advantage of the law of 1828, as the time under it expired on the 3d of July, 1829. The letter also shows that the Receiver's receipts, issued and reported on, were numbers from 5211 to 5225, inclusive. Now, the receipt 5220, had been surrendered by Russell in order to get his final receipt or certificate, and as the receipts in the letter ran from 5211 to 5225, evidently 5220 was contained in the report; thus again we have two other circumstances, two facts, the date and the number of the receipts agreeing as being in the report. We have also the further fact that Russell surrendered the receipt, and it was sent in the report to Washington.

Now, what is the reply to the report? It is as follows:

EXHIBIT NO. 7.

"GENERAL LAND OFFICE, September 12, 1829.

"SIR:—Your letter of the 4th of July last and returns under credit system from the first to the third of that month, together with three cancelled certificates of stock issued at Kaskaskia, have been received, and the last compared with the register's abstract thereof and found to be correct.

"I am respectfully, your ob't sev't,
G. W. GRAHAM."

This shows the report was received, and that the original certificate was received, and that everything was found correct. It was found to be correct, on examining the books at Washington, that Lewis entered the land and a certificate was given him; that he paid part of the money, and Russell as his assignee delivered up the certificate and paid the balance due the government, and that it was correct, that the Government had received every cent due it on the land, and had no further claim to it, and Russell as assignee of Lewis was by law entitled to a patent.

In addition to the above we produced the final certificate itself, record p. 12, abstract p. 3, and proved the signature to the same by Harry Wilton, whose deposition appears in the record on pp. 12 and 13, abstract p. 4.

Every act of the parties, from the pre-emption by Lewis down to the final receipt by Russell, is thus clearly shown. It is a fact that Lewis claimed to have a pre-emption right on the land; it is a fact he gave Russell an agreement and power of attorney to enter the land and perfect the litle; that the land was entered in his name and one-fourth of the purchase money paid as was required by law; that he gave a deed to Russell of the land, and Russell made the full or final payment on it, and received his final certificate.

Now, under these facts, can this court for a moment doubt but that Russell had the certificate of entry duly assigned to him by Lewis, and that the officers only did their duty? But suppose he had not; that he only had the deed and power of attorney, as is claimed by counsel for plaintiff in error, then how does it appear? By the deed Russell either had or had not Lewis' right to the land. If he had it, when he paid for the land he was entitled to a patent.

If he did not have it, it certainly can not be denied that under the power of attorney he was authorized to act for Lewis, as it is expressly provided in it that Russell is "fully empowered and authorized to do every other matter and thing he may deem proper or necessary towards completing the title for the same, that I, said Lewis, could do if I were personally present."

Now, if acting for Lewis under the power of attorney, he paid the money, then the Government having received its money, has no further claim on the land. Either Lewis or Russell is entitled to a patent; that one of them is, is certainly unquestionable, and if either is, then plaintiff has no right to recover, as the Government only held the property in trust, having received its money, it could not sell it. The rules and regulations of the department then were that "without such evidence of assignment, the Commissioner of the General Land Office was required by law to ignore the assignee and issue patent to the original purchaser, even though said assignee should have made the final payment in the case." Letter Comr. Drummond, p. 38 record, printed record 18. Thus, by the rules of the department, the Government acknowledged it should issue a patent, having received the money, but would issue it to the original purchaser and not to the assignee. In this case, if the rules and regulations have not really been complied with so as to issue the patent to Russell, yet Lewis is, by the same rules, entitled to have it issued to him. Such being the case, the Gov-

ernment could not, after Lewis had paid for and was entitled to a patent, again sell the land.

In addition to this the plaintiff admitted on trial that the defendants and their grantors from Russell have a regular chain of title, all properly made and recorded; have paid all taxes, and have always been in the undisturbed possession of the land, and undisputed until the plaintiff claimed the same.

Now, upon this evidence, I claim it to be a well established fact that the Government received every cent of money due on the land on July 2, 1829; that the certificate of final payment was given him, and nothing was to be done but to issue a patent to Russell, or, in any event, to Lewis or Russell. The court below so found the facts.

Second—If such are the facts, what is the law? Does it make plaintiff's patent issued after that time void?

In Armstrong vs. Hammond, 3 McLean, 107, the court uses this language: "Until the patent is issued the purchaser has not the legal title, but having made his entry of land and having paid for it, the government can no more dispose of the land to another person than if the patent had been issued. The final certificate obtained on payment of the money is as binding on the government as the patent."

In the case of Carroll vs. Safford, 3 How. 460, the court uses the following language: "When the land was purchased and paid for it was no longer property of the United States, but of the purchaser; he held for it a final certificate, which *could no more be cancelled by the United States than a patent.*" And on page 461, "Suppose the officers of the government had sold a tract of land, received the purchase money, and issued a patent certificate, can it be contended that they could sell it again, and convey a good title? They could no more do this than they could sell land a second time which had been previously patented. When sold, the government, until the patent shall issue, holds the mere legal title for the land in trust for the purchaser; and any second purchaser would take the land charged with the trust."

We might continue to quote the language of the numerous decisions of the Supreme Court of the United States to the same effect, but deem it necessary, and will only refer to the last decision made by this court on this point, which is reported, being the case of Wirth vs. Bronson, 98 U. S., S. C. 8 Otto, p. 118. Justice Bradley delivered the opinion of the court. The plaintiffs had the patent title, the court below gave the following instruction for defendants: "That defendants had shown that on the 10th of January, 1818, the land warrant of Giles Egerton was duly located in

and upon the land in controversy, which location is not shown to be vacated or set aside, and therefore said land was not subject to entry by grant to Leonard in 1838." A verdict was thereupon given for the defendant. To this instruction plaintiff excepted.

"We are satisfied that the second instruction, at least, correctly expressed the law of the case, and renders the production of the original patent to Egerton entirely immaterial. The land in question was shown to have been located in his favor in due form, under a regular military land warrant, and no attempt was made to show that this location was ever vacated or set side. Whilst this location was in force, no other could lawfully be made on the same land. A subsequent location, though followed by a patent, would be void. Everything was done, which was required to be done, to entitle Egerton to a title for the land. Being for military bounty, no price was payable therefor. The land became segregated from the public domain, and subject to private ownership, and all the incidents and liabilities thereof.

"The rule is well settled by a long course of decisions, that when public lands have been surveyed and placed in the market, or otherwise opened to private acquisition, a person who complies with all the requisites necessary to entile him to a patent in a particular lot or tract, is to be regarded as the equitable owner thereof; and the land is no longer open to location. The public faith has become pledged to the locator, and any subsequent grant of the same land to another party is void, unless the first location be vacated and set aside.

"This was laid down as a principle in the case of Lytle vs. The State of Arkansas and others, 9 How. 314, and has ever since been adhered to: See Stark vs. Starr and others, 6 Wall. 402. Subsequent cases which have seemed to be in conflict with these, have been distinguished from them by the fact that something remained to be done by the claimant to entitle him to a patent, such as the payment of the price, the payment of the fees of surveying, or the like. The proper distinctions on the subject are so fully stated in the cases of Stark vs. Starr et al., 6 Wall. 402; Frisbie vs. Whitney, 9 Wall. 187; Yosemite Valley Case, 15 Wall. 77; Railway Company vs. McShane, 22 Wall. 444, and Shepley vs. Cowan et al., 92 U. S. 338, that it would be supererogation to go over the subject again."

This being the law, we conclude that the fact being that the land in controversy being paid for, the Government having received every cent due it on the land, the Government could not sell it again; could not give plaintiff or his grantor any right or title as against Lewis or Russell, that the patent is void.

II.

The land having been segregated from the public domain, the laws regulating the same are the laws of the State of Illinois and by the laws of Illinois possession, for twenty years claiming title or possession under color of title and payment of taxes for seven years by defendant, or his grantors, is a bar to any recovery against him.

This court in Wilcox vs. Jackson, 13 Peters, 517, use this language: "We hold the true principle to be this, that whenever the question in any court, State or Federal, is, whether a title to land which had once been the property of the United States, has passed, that question must be resolved by the laws of the United States; but that, whenever, according to those laws, the title shall have passed, then, that property, like all other property in the State, is subject to State Legislation, so far as that legislation is consistent with the admission that the title passed and vested according to the laws of the United States."

The provision of the Revised Statutes of Illinois is as follows: The certificate of any register of the United States of the entry or purchase of any land within his district shall be deemed and taken to be evidence of title in the party who made such entry or purchase, or his heirs or assigns, and shall enable such party, his heir or assigns, to recover or protect the possession of the land described in such certificate in any action of ejectment and forcible entry and detainer unless a better, legal and paramount title be exhibited for the same. Rev. Stat. Ill. 1874, p. 491, § 20; Rev. Stat. Ill. 1877, p. 478, § 20.

The Supreme Court of Illinois in McConnell vs. Wilcox, 1 Scam., p, 372, use this language, "To this statute this court has in the case of Bruner vs. Manlove, 1 Scam., p. 156, given an exposition by the unanimous opinion of the court, which every day's experience shows to be based on the firmest principles of policy and justice. In that case it was said, that the Register's certificate is raised to as high a point of evidence in this form of action, as a patent possibly could be. Its effect is to be the same, and the rights derived from it, for the purpose of recovering or maintaining possession of lands described in it, are co-extensive with the most formal regularly issued patents. These certificates not only vest the title acquired by purchase from the Government, in the purchaser for the purpose named, but make that title transmissable to the heirs or assignee. For any purpose then, so far as regards the character of these certificates, as evidence in an action of ejectment, they must be considered of as high a dignity as patents, and partaking of all their legal attributes. Having settled

their character and effect, the rights of the parties under them, must be governed by the same rules of interpretation as in the case of patents. No reason can exist for an exception."

Thus by the statutes and decisions of the courts of Illinois the same weight is to be given to the Register's certificate as to the patent. The Register's certificate being prior in date, the older of the two must of course prevail. It is an admitted fact "that the defendant and his grantors from Russell have a regular chain of title, all properly made and recorded, have paid all taxes, and have been in the undisturbed possession of the land described in the declaration from John Lewis down until the plaintiff claimed the same."

Under the laws of Illinois twenty years adverse possession of land is a bar to prevent any recovery from such possesion. R. S. Ill., 1845, p. 349, § 7.

Now in this case the facts are clear: 1st. The Government has received from Russell full payment for the land—then by law the land being segregated from the public domain is to be governed by the laws of Illinois.

2d. That Russell has the final certificate from the Register of the United States, and by the law of Illinois the same force and effect is given to it as to a patent and the certificate being older than the patent must prevail.

3d. That defendant and his grantors have for 49 years had undisturbed possession of the land, claiming to own it before plaintiff brought this suit.

4th. That they have paid all taxes due on the land and by the laws of Illinois possession twenty years, claiming title, or possession for seven years under color of title and payment of taxes will prevent a recovery by defendant in this case.

I will now answer the points made by counsel for plaintiff in error.

I.

"There was no proof of an assignment or conveyance by Lewis to Russell such as could be recognized by the department. The deeds from Lewis to Russell are not properly certified. The evidence of assignment or conveyance was required to be filed in the General Land Office. This was not done; but by a memorandum at the bottom of declaration No. 430, it may be a deed was shown to the Register in 1822, and retained by Russell under circumstances indicating fraud. The laws of the United States and not the State, are to govern in determining whether the title has passed

from the Government; and the law and the instructions sent from the Treasury Department must have been followed by the Register and Receiver."

The power of attorney and deed from Lewis to Russell, counsel for plaintiff in error, does not contend, are not legal instruments made with all the formalities required by the law of the State of Illinois, but because the certificate of the clerk of a court was not attached certifying that Davidson, the justice of the peace before whom they were acknowledged, was a justice of the peace, that consequently they are not admissable in evidence. The power of attorney was made in 1815, the deed in 1816, and both were recorded in the year 1816 in the Recorder's Office of the same county in which the justice of the peace resided. Is not this fact alone sufficient to show that Davidson was really a justice of the peace? As I view it the instructions from the land department are only intended as a rule, a guide for his subordinate officers in order to have regularity and system in the department, that they are not iron laws which do not allow the least deviation, and do not prevent courts from deciding that the law has been complied with outside of the regulations, that the main question is what is the spirit, the intention of the law and not the rule laid down by the department.

As the power of attorney and deed were valid legal instruments according to the laws of the State of Illinois and sufficient to pass and assign all Lewis' interest in the land. I claim that it is such an assignment as will justify this court in holding that it is a good and valid assignment everywhere, that it is such an assignment as was contemplated by the law of Congress.

But this objection and the argument of counsel under it are based entirely upon the idea that because the deed was shown to the officer when relinquishment No. 430 was made that consequently there was no other assignment. This is an assumption, but is not the fact. Relinquishment No. 430 was made in 1822, and was never acted on, the only apparent reason being that it might not have been accepted by the Government officers for the reason counsel state that the deed was retained by Russell, but in 1829, when Russell made his final relinquishment and payment all appears to have been regular and in proper form, and was acceptable to the local officers and the department at Washington; now whether the certificate itself had been assigned and presented, or whether to the deed the certificate of the clerk of court had been attached, showing Davidson was a justice of the peace, it is impossible at this late date to tell, but the fact remains that Russell then did comply with the law to the satisfaction of the Govern-

ment officers, and this court will presume they did their duty, and in considering this question, will examine the entire acts of the parties, with the view of sustaining these acts, they having stood the test of nearly half a century.

It is also urged why not produce the certificate so assigned or the deed so certified, that the Commissioner now reports it is not on file at Washington. After the delivery to the Government officers the party has no control of the papers so delivered, his final receipt is his voucher and this we produce. I do not know what is the custom in the department about keeping these papers, whether kept or not, if all such papers are kept, it must be an herculean work to examine them all to see if any certain papers are mislaid or otherwise out of place. The Commissioner does not certify that this was done, and yet it would have to be done and thoroughly done to prove the fact that they are not now in the department. And even if done and such should now be the case, what will the court presume after this lapse of time? Will it take it for granted that the papers are now in the department, or will it not presume that they were once there but have been mislaid or destroyed? Certainly it will not be contended that all of the old papers of this department are on hand; none have been destroyed or mislaid. The so-called exemplifications of the Commissioner in this case appear to be only answers to letters, the extent of the examinations are not stated, and the court without a statement in the same as to the extent and thoroughness of the examination can give very little weight and credit to the same. Certainly as against the acts of the parties at the time, the acts of the Government officers at the time, the final certificate and the continuous and undisturbed possession of the land, this letter, miscalled an exemplification, can not prevail.

If the land was actually paid for to the Government, as I contend, then the power of attorney and deed are to be construed according to the laws of Illinois and by them, these instruments are a full and complete assignment of Lewis' claim and title in the land, and also under these same laws, Russell and his grantees, by virtue of the final certificate of payment, have the title to the land.

II.

"The lands in dispute were declared forfeited by the General Land Office, and were offered at public sale in July, 1824, and not being then sold, they became subject to private entry afterwards, and remained so until purchased by plaintiff's assignor in 1871. The courts, in the absence of other evidence, will presume in favor of the official action of the Government officers, that the forfeiture was made, and all the necessary steps taken under the

laws, and that the patent issued legally, and upon him who assails the patent for want of power in the officer by whom it was made, rests the burden to establishing this fact, and no presumption will be indulged that the Commissioner did not do his duty in such case."

The third objection is as folllows:

III.

"There can be no outstanding claims on Lewis or his heirs, because his rights were forfeited for non-payment of purchase money according to the terms of the original purchase, and it is not pretended that he claimed any further credit or made any final payment under any extension. His rights were concluded by the forfeiture in 1821, and offering lands at public sale in 1824, and making them again private entry."

As the two objections are similar, I will answer them together: The only evidence upon which it is claimed there has been a forfeiture of these lands, is *first*, the writing in pencil across the original entry in Ledger B, p. 87, of the Receiver's book reported as forfeited 1st October, 1821.

Second—The Commissioner in his letter states that it was forfeited at that time and offered for sale in 1824. There is no evidence by whom or when the pencil writing was put on the ledger; the handwriting is entirely different from that in ink; it bears on its face evidence of having been put there without any right or authority, and a mere memorandum of that kind, without any proof or evidence of any kind, certainly should not and will not have any weight with the court against the actual facts stated in the ledger. The ledger shows that the money was paid, and the last entries were made on July 2d, 1829, and the book and account then balanced.

Now, is it reasonable to suppose that the money would have been received and the entries then made in ink, the account then closed, if nearly eight years previously the land had been forfeited? If the pencil mark had been then made it would have been erased—rubbed out. It was evidently put there long after the account was closed, long after the entries were made, as can be plainly seen by looking at it. We regard this unsupported and uncorroborated pencil writing as highly suspicious; but giving it all due weight, it can avail nothing, as against the positive facts contained in the ledger, which expressly contradict it.

We deny as a fact that there is any evidence before the court that the lands were declared forfeited, and were offered for sale in

1824. We have no copy of the original entry to that effect, only the written statement of one of the officers in that department in 1872, that such was the case that he so construes what he finds—but it is not for him, but this court to construe it. The facts should have been presented as we present it, either the original books or copies of the entries in the same, so that we could see them, and the court could pass upon and construe the same; but instead of this, only the opinion of the Commissioner as to how he construes or decides it, is presented. We are not trying our case before him; if that were the law, it would be useless to have courts for these cases, if the opinion of the Commissioner is to prevail, anyhow, why have courts passed upon the question? The position is illegal and untenable, and only shows how absurb is the position, and how necessary it is to present to the court the facts and not the opinions of others in these cases, just the same as in all other cases.

But even suppose the land was forfeited and it was offered for public sale, of what avail would it be to the plaintiff? The second section of the Act of March 21, 1828, above referred to, 4 Stat. at Large, p. 259, is as follows, viz: "That the provisions of this Act be and the same are hereby extended to all lands on which a further credit has not been taken, and which having become forfeited to the United States since July 1st, 1820, remain unsold."

This Act unquestionably embraced this land, for if a forfeiture had been declared on October 21, 1821, it was subsequent to July 1, 1820, and the law embraces all lands then unsold, and counsel admits at that time the land was unsold; then it matters not whether the land was ever forfeited, as Lewis or Russell could, under the Act, legally, do what he did. If forfeited, as is claimed on October 21, 1821, yet on the passage of this Act, remaining unsold and being still unsold on 2nd July, 1829, under this Act, Lewis or Russell had unquestionably the right to make the relinquishment, and make the final payment on the land retained.

The Government certainly had a right to be lenient—certainly had a right to extend the time, and having done so, and this land coming within both the letter and the spirit of the law, Lewis or Russell had most certainly the right to comply with the law, to take advantage of the leniency thus extended, and having done so, the Government had no further claim on the land, and it rightly belonged to Lewis, or Russell as his assignee.

IV.

Neither Lewis or Russell made final payment and the decision of the Commissioner on this point, and that there was no assignment filed as required by law is final and conclusive in this case.

The decision of the proper officer acting within the scope of his authority that certain antecedent acts which were required had not been performed can not be attacked in this case.

I claim final payment was made by Russell, that the original books introduced in evidence by defendant conclusively show that fact, that they are corroborated by the letters of S. Bond, the Register, and the reply of Graham, the Commissioner, and by the final certificate itself, that Russell's right then became vested. If it is claimed by the decision of the Commissioner, the decision made upon the relinquishment of 1822, No. 430, I reply that as to this I have previously answered fully and the relinquishment made in 1829 was properly made.

If it is concluded as it was below that the letter of Willis Drummond, Commissioner, is a final decision, I reply: 1st. It was not given as a decision, but merely as a reason why he permitted the patent to issue, his excuse for so doing.

2d—There was no contest about the issuing of the patent, consequently there could be no decision binding Russell or his grantees.

The patent was issued for this land to the plaintiff just as is daily issued, without any opposition, upon mere application. Neither Russell, who had paid for the land, nor his grantees, who had been in undisputed possession of it over forty years, received any notice of, or had any knowledge of the application by plaintiff for a patent to this land. They not being aware of it, did not resist the granting of the same. There was no appearance before the commissioner by Russell or his grantees, no presentation or discussion of their case or rights before him, how, then, without notice, without appearing, there being no discussion of their rights, no contest over them, could there be a decision binding on them? To hold such would be in contravention of every principle of right, would be a denial of justice; would be perpetrating a judicial robbery. I contend, 1st. That under the statutes and decisions of this court there must be an actual contest or trial; there must be a submission of the claims of the respective parties for a decision.

2d—That in this case Russell having actually paid for the land, there existed no right in the commissioner to grant a patent to plaintiff; that there was nothing to be done by the purchaser except to receive his patent; the title had passed out of the Government, and the jurisdiction of the Land Officer was terminated.—Moore vs. Robbins, 96 U. S., 530.

3d—There being no contest, no submission of Russell or his grantees claims to the commissioner when the patent was granted

to plaintiff, there is no decision binding on Russell or his grantee, the defendant.

4th—If the acts of the land officers were final, then they could not afterwards interfere with the land, it had gone out of their jurisdiction, and the issuance of a patent to plaintiff without legally setting aside the certificate to Russell, was void, as established in the case above, and also 96 U. S., Moore vs. Robbins, 530.

But, at the time of issuing the final certificate to Russell, there was no such powers given to the Land Department. Their acts were ministerial and not judicial in the disposition of the public lands.

In Ware vs. Bust, 1 McLean, p. 535, the court says: "The Register, in issuing the warrant, acted ministerially, and so did the Commissioner of the General Land Office in issuing the patent. They could determine no matter which settled the right between the present parties, their duties were ministerial and not judicial." See, also, 3 Howard, 461.

The Act conferring the power of decision in cases of contest, was passed July 12, 1858, amending the Pre-emption Law of 1841.

In the case of Robbins vs. Bunn, 54 Ill., p. 51, Chief Justice Lawrence in delivering the opinion as to the effect of the acts of the Land Officers, lays down the doctrine: "That there are two classes of cases. One, when the parties have submitted their claims to the decision of the Secretary of the Interior, and it is conclusive; and the other, where the Government has sold a tract of land and received the money from the purchaser, he has acquired rights which the land officers can not divest, and if the Government afterwards grants the legal title to another such grantee takes its subject to the equities of the first purchaser, which it is the exclusive province of the judicial tribunals of the country to investigate and determine without being governed by the action of the land officers. The courts say the cases of the first class relate to pre-emption claims upon which the land officers have decided. The pre-emption law of 1830 required proof of the facts upon which the rights of pre-emption depended, to be made to the satisfaction of the Register and Receiver, agreeably to rules to be prescibed by the Commissioner of the General Land Office. This, by implication, gave them the right to decide all cases of contested pre-emption, so far as they depended upon the facts of prior settlement, and this construction has been uniformly given to the law, as will be seen in the cases cited. But where these officers have undertaken to cancel a patent or a certificate of entry for which a purchaser has paid his money, either at their discrecretion or under some pretended regulation of the department

which the law did not authorize, or under some clearly erroneous construction of the laws of Congress, the courts have held themselves not bound by such acts of the officers of the Land Department, because they were not exercising a judicial function within the limits prescribed by law." This court held, in the case of the Union Pacific Railroad, that Secretary Schurz's decision in a contested case as between the settlers and the railroad company was not only not final, but they reversed the same as being against the law.

V.

"The defendant must clearly show that he or his grantors have complied with the law, and all the requirements of the land department. Until he performs all these prerequisites, he has no vested interest in the premises and the lands do not become segregated from the public domain. Neither Lewis nor Russell complied with these conditions (see Nos. I and IV), and so did not acquire such a right as will enable the defendant, who claims under them, to set up any defense to this action."

This point is based entirely upon the assumption that the facts are as claimed by counsel for plaintiff in the first and fourth points made by him, which I deny, and have discussed previously. If I am correct in my views then as the facts are not as claimed by counsel in this point, his position, his premises in this respect being erroneous, fallacious, his conclusion must equally be so.

VI.

"The pretended final certificate, dated July 8, 1879, is not a genuine final certificate in form or substance. It is unofficial and irregular, and is not sufficient to found a defense upon in this action."

The objections to it are: 1. Lewis' name don't appear in it. 2. It is all written, the description of the land is in figures, counsel contending that such were the requirements of the Land Department at the time. Whether they were or not I can not say, not having access to the book from which he quotes; but admitting such to be the case, what does it amount to? Would it not only be that the local officer had disregarded his instructions or had made a mistake? In either event it could not effect the innocent purchaser; that the land had been paid for by Russell the books, the letters of the Register, and the reply of the Commissioner all show. Now, having paid for the land he would receive a certificate or final receipt. If in issuing this certificate the officer did not follow the rule or regulation of the Department in this respect, whose fault is it? Not the purchaser's, and he should not be the loser thereby.

This court in Beatle vs. Hearne, 19 How., p. 261, where the facts were that the Register in his certificate had put the wrong name in it and caused the patent to be issued to the wrong person and rights claimed under it, held that the party was nowise responsible for this; he had paid his money into the Receiver's office, he had obtained his receipt and was entitled to a patent.

Suppose, for instance, the facts showed that Russell had actually paid for the land, the government had all its money, but the Register refused to give a final certificate, could Russell or his grantees even in that case be injured? I apprehend not. But if after payment the Register, who perhaps may have been out of printed blanks, writes a certificate, and in it describes the land by figures instead of writing it in full, that thereby the purchaser loses his title, would I apprehend be doing violence to the substance to give force to the letter of the law.

VII.

"The signature of the Register to the so-called final certificate was not proved by competent testimony. The signature can not be proved by comparison in this case, nor is it enough that the witnesses may have seen the signature of the party to other instruments unless they are shown to have been genuine and to have been rcognized by the party as having been signed by him."

The court will remember that the certificate was signed in July, 1829, this suit was not commeneed until in January, 1878, nearly fifty years after the certificate was made. During this time more than one generation had passed away, and defendant almost despaired of finding a living witness to prove S. Bond's signature, but finally succeeded in finding one, he being then 84 years old. He testified that he was Sheriff of Washington County, Illinois, in 1819, and S. Bond was then Governor of the State of Illinois, and gave him his commission as Sheriff. He also thinks he has seen letters that were written by Bond, that the signature to his commission and to the certificate are about the same, and regards the signature to the final certificate to be S. Bond's signature. I contend under the circumstances of this case that the signature has been established.

It is not necessary that the handwriting of a party should be proved by one who has seen him write.

Reid vs. Hodgson 1 Cr. C. C. 490.
Rodgers vs. Retter 12 Wall. 317.

When from the antiquity of the writing, it is impossible for any

living witness to swear that he ever saw the party write, comparison of handwriting with a known document may be admitted.

Strother vs. Lucas, 6 Peters, 763.
Turner vs. Foxall, 2 Cr. C. C. 324.

I contend, first, that Wilton had sufficient knowledge to prove the signature; second, if not, under the circumstances he could prove the same by comparison, that the evidence is to the effect that the signature to the commission was S. Bond's, the law then, as now, made it his duty to sign the commission, and if there is at present a custom for private clerks to sign the Governor's name to such papers, of which we have no evidence except counsel's assertion, and which is a violation of the Governor's duty, there is nothing to show such was the case in 1819, then the Governor was fully able to do all the duties of his office with a number of clerks to assist him, as the State was then in its infancy. The court will also recollect that one of the letters of S. Bond was read to the court. (p. 11 of Record.) It was read from his letter book. Some of the letters in it were signed S. B., some S. Bond; the court saw and examined the same, and on looking at it, it was at once apparent that the signatures of S. Bond, in the letter book and the final certificate were the same.

VIII.

"There being no sufficient proof in the case to show that the land became segregated from the public domain there is no title in the defendant—not even an equitable title of such a character as would be available in equity, much less as a defense against an action in ejectment.

"Two distinct systems of juris-prudence prevail in Illinois—one of equity and one of law—and the same distinction is preserved in the United States Courts."

This point is based upon the assumption of the fact that there is no proof that the land became segregated from the public domain. In my argument, I contend that the evidence clearly and unquestionably shows that exactly the opposite is the fact, and refer the court to my argument on this point. If I am correct in my argument, if the facts are as I contend, then this point is not well taken, there being no facts to sustain the proposition of law contended for in this point.

I have not so far said anything about the confidential letter written by B. Stephenson to Josiah Meigs in 1816, and made part of the so-called exemplification of Willis Drummond, the Commissioner. This letter has no connection with this land, nor the payment of the same, is not a public document nor intended as such.

It is no part of the public records, nor made by a public officer in the course of or performance of his public duties as part of the same. It was not even intended to have such publicity as an ordinary letter might receive, but on the contrary, was *confidential.* A letter written by a third person is not evidence, since the writer may be examined and the opposite party has the right to cross-examine.

Muns vs. Dupont, 3 W. C. C., 31.

Vasse vs. Miffin, 4 W. C. C., 519.

Strong vs. United States, 6 Wall., 788.

The only reply we wish to make regarding what is said in the letter about William Russell, is that he lived and died in his neighborhood; that he owned large tracts of land at his death, earned by industry, thrift and general good management of his business; and his character as an upright citizen was as well established as any person's then living, and can be so proved by plenty of living witnesses, and that the writer of the letter did not dare to openly attack him, but did it under the disguise of a *confidential* letter.

The wholesale charges of corruption against all the officers in the letter, S. Bond amongst them—one of the Governor's of the State of Illinois—must convince any impartial mind that the writer must have been moved by the spirit of malice when he wrote it. And must not plaintiff's case be desperate when he would dig up this confidential letter long after a man is dead, and endeavor to use it by suspicion on Russell's acts, and thus to try and strengthen his case when if suspicions were to be indulged in, it would appear that he was trying to bolster up his act, an act by which he is endeavoring to deprive innocent persons of their land. As I view it plaintiff has no grounds for maintaining his suit, and I submit, should not the judgment of the Circuit Court be affirmed.

CHAS. P. WISE,
Attorney for Defendant in Error.